



CANADA

RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

CONCERNING AN ALLEGED COMBINE IN THE  
DISTRIBUTION AND SALE OF GASOLINE AT  
RETAIL IN THE VANCOUVER AREA

Department of Justice  
Ottawa



RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

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DISTRIBUTION AND SALE OF GASOLINE AT  
RETAIL IN THE VANCOUVER AREA

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COMBINES INVESTIGATION ACT

---

Ottawa  
1954




RESTRICTIVE TRADE PRACTICES COMMISSION

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.  
Chairman

Guy Favreau, B. A., LL.B.  
Member

A. S. Whiteley, B. A., M. A.  
Member



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RESTRICTIVE TRADE PRACTICES COMMISSION

OTTAWA

February 16, 1954.

Honourable Stuart S. Garson, Q. C.,  
Minister of Justice,  
Ottawa.

Sir:

I have the honour to submit to you herewith the report of the Restrictive Trade Practices Commission dealing with an alleged combine in the distribution and sale of gasoline at retail in the Vancouver area.

The inquiry was initiated by the Commissioner of the Combines Investigation Act before the coming into force on November 1, 1952, of Chapter 39 of the Statutes of Canada, 1952, and the matter was brought before the Commission under the transitional provisions of the said Chapter 39 and has been dealt with in accordance with the provisions of Sections 18 and 19 of the Combines Investigation Act, as amended.

Argument was heard by the Commission at Vancouver in proceedings before the Chairman and Mr. Guy Favreau between March 27 and April 1, 1953, when Messrs. D. McK. Brown and S. F. Sommerfeld appeared on behalf of the Director of Investigation and Research, and Messrs. D. N. Hossie, Q. C., T. J. Norris, Q. C. and George Cummings, C. K. Guild, Q. C., and O. N. Lundell appeared on behalf of the parties mentioned in the Statement of Evidence.

The Commission has been in a position to proceed to its report only since November 13, 1953 when an application for Writ of Prohibition filed by one of the parties was dismissed by the Supreme Court of British Columbia.

Mr. A. S. Whiteley was not present during the argument and took no part in the preparation of this report.

Yours faithfully,

(Sgd.) C. R. Smith  
Chairman



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## CHAPTER I

### REFERENCE TO THE COMMISSION

This inquiry was brought before the Restrictive Trade Practices Commission under the transitional provisions of Chapter 39 of the Statutes of Canada, 1952. The relevant provisions are found in Subsections (1) and (4) of Section 10 of said Chapter 39, and read as follows:

"(1) Where, prior to the coming into force of this Act,

- (a) the Commissioner of the Combines Investigation Act had caused an inquiry or investigation to be made under the Combines Investigation Act,
- (b) no report had been made under subsection one of section twenty-seven of that Act, and
- (c) the Commissioner had exercised any of the powers conferred upon him by section twenty-two of that Act,

the inquiry or investigation may be continued and completed and report thereon may be made as though this Act had not been passed."

"(4) In the case of an inquiry or investigation referred to in subsection one . . . of this section, the Commissioner of the Combines Investigation Act . . . may, instead of making a report as therein provided, prepare a statement of evidence and submit it to the Restrictive Trade Practices Commission and to each person against whom an allegation is made therein, and for the purposes of the Combines Investigation Act, as amended by this Act, such statement shall be deemed to be a statement submitted to the Commission pursuant to subsection one of section eighteen of the said Act as enacted by this Act."

Prior to the coming into force of the said Chapter 39, the Commissioner of the Combines Investigation Act had caused an inquiry or investigation to be made under the said Act, but no report had been made by him under Subsection (1) of Section 27 of that Act. Under authority from the Commissioner, hearings were held at Vancouver before J. J. Quinlan, Combines Investigation Officer, on

July 30, July 31, August 1, August 2, August 3, August 6, August 7 and August 8, 1951, at which time the following persons were examined:

James Lloyd Kinneard	Collin Virteau
Thomas Donald Hammond	Douglas Dalzell Darling
William Christian Mogensen	Albert Murray Martin
Joel Cutforth Gordon	Jack Gollner
William Leonard Grout	Cyril Victor Mark
Paul Raymond Faris	Richard Frederick Smith
Gordon Earl Parsons	Sidney James Morrey
Horace Clarke	William Hardy
Robert John Thompson	Edward Alexander Bence

Further hearings were held at Vancouver before the said J. J. Quinlan, on July 7 and July 8, 1952, at which time James Lloyd Kinneard and Collin Virteau were re-examined.

After the said Chapter 39 came into force, on the 1st day of November, 1952, the Commissioner, now the Director of Investigation and Research under the Combines Investigation Act, availed himself of the alternative afforded by Subsection (4) of Section 10 of said Chapter 39, and, instead of making a report himself on the matter already investigated, submitted to the Restrictive Trade Practices Commission a Statement of Evidence, dated December 8, 1952.

## CHAPTER II

### ALLEGATIONS

The Statement of Evidence submitted to the Commission contained in substance the following allegations, which are to be found in Part I thereof, under the title, "General Statement":

- (a) Prior to April 18, 1951, the retail price of gasoline was controlled in British Columbia by a public authority, the Coal and Petroleum Control Board, which was established in 1937 by the Coal and Petroleum Products Control Board Act R.S.B.C. 1948, c. 54. The Board had the power to make regulations and did make regulations from time to time fixing a specified wholesale price for gasoline and a specified retail margin, for different areas throughout the Province, and until April 18, 1951, the price of gasoline was so controlled in the Vancouver area. The Coal and Petroleum Products Control Board Amendment Act, which was given formal assent on April 18, 1951, repealed those provisions of the Coal and Petroleum Products Control Board Act under which the Board was empowered to make regulations prescribing fixed prices and margins for gasoline. Since April 18, 1951, there has been no provincial government control of the price of gasoline in British Columbia.
- (b) The evidence indicates that a combine or combines within the meaning of the Combines Investigation Act exists or exist in the Vancouver area in the Province of British Columbia in connection with the retail sale of gasoline, and has or have so existed in the years 1951 and 1952, in that the parties named herein have entered into actual or tacit contracts, agreements or arrangements or have been party or privy thereto or have knowingly assisted therein, having or designed to have the effect of fixing a common price or a resale price of and enhancing the price of gasoline in the Vancouver area, and preventing or lessening competition in and substantially controlling within the Vancouver area the sale of gasoline at retail, and otherwise restraining or injuring trade or commerce in the Vancouver area, which said contracts, agreements or arrangements were and are likely to operate to the

detriment or against the interest of the public by depriving the public of that competition in the retail sale of gasoline to which the public is by law entitled. The evidence also indicates the existence of certain measures relating to automotive parts and accessories.

- (c) The purpose and effect of the said contracts, agreements or arrangements are, and have been in the period since decontrol of gasoline by the government of British Columbia, to establish and maintain a minimum retail mark-up of 20 per cent of the wholesale tank-wagon price of gasoline plus provincial tax delivered in the Vancouver area, which has resulted in a uniform retail price for gasoline at all or substantially all retail outlets in the Vancouver area, and otherwise to prevent or lessen competition in the sale of gasoline in the Vancouver area.
- (d) The further effect of the said contracts, agreements or arrangements has been virtually to eliminate price competition in the retail sale of gasoline in the Vancouver area since July 10, 1951.
- (e) The further effect of the said contracts, agreements or arrangements has been to enhance the retail price of gasoline in the Vancouver area. Immediately prior to April 18, 1951, the retail margin on gasoline in the Vancouver area as established by regulations of the Coal and Petroleum Board was five cents per gallon. This margin continued to prevail throughout the Vancouver area following the decontrol of gasoline by the provincial government. As a result, the prevailing retail price of gasoline per gallon in the Vancouver area immediately prior to July 10, 1951 was 36.5 cents for the regular grade and 38.5 cents for the premium grade. On or about July 10, 1951, pursuant to the said contracts, agreements or arrangements, the retail price of gasoline was increased at substantially all service stations in the Vancouver area, with the exception of five stations owned by Standard Oil Company of British Columbia, Limited, hereinafter referred to, to 37.8 cents for the regular grade and 40.2 cents for the premium grade. The prevailing wholesale tank-wagon price of gasoline, including tax, delivered in the Vancouver area immediately prior to July 10, 1951, was 31.5 cents per gallon and 33.5 cents per gallon respectively, and this continued to be the prevailing tank-wagon price in the Vancouver area until on or about August 1, 1951. On or about August 1, 1951, the wholesale tank-wagon price, including tax, increased to 32.0 cents per gallon for regular grade and 34.0 cents per gallon for the premium grade. At or about the same

time, pursuant to the said contracts, agreements or arrangements, the retail price was increased at substantially all service stations in the Vancouver area to 38.4 cents for regular grade and 40.8 cents for premium grade.

Parties Mentioned in the Statement of Evidence

According to paragraph 6 of the Statement of Evidence, the following are alleged to "have been principally concerned in the misconduct described in this Statement":

The Retail Merchants' Association of Canada  
Automotive Retailers Association  
Standard Oil Company of British Columbia Limited

James Lloyd Kinneard	Art. Mendlin
Collin Virteau	Don Anderson
Thomas Donald Hammond	Art. Powell
Douglas Dalzell Darling	Harvey Lowe
William Christian Mogensen	Frank Lee
Albert Murray Martin	Ed. Qualey
Joel Cutforth Gordon	Hugh Smith
Jack Gollner	Milt. Read
William Leonard Grout	Vern Rankin
Cyril Victor Mark	Jack Reid
Paul Raymond Faris	Frank Barry
Richard Frederick Smith	Chuck Lew
Gordon Earl Parsons	Frank Quirk
Sidney James Morrey	Norm Macey
Edward Alexander Bence	Dick Kline
George R. Matthews	Dave McLennan
Len Carver	Maurice Marisco
Al. Higgins	George Cohen
Andy Johnson	Don Lewis

It is stated at the beginning of paragraph 5 that "the incorporated Automotive Retailers Association . . . was incorporated under the laws of British Columbia on March 1, 1952". It is further stated that the unincorporated Association known as the Automotive Retailers Association was formed in 1951 with the assistance of the Retail Merchants' Association of Canada, which had a trade section called the Automotive Division. By virtue of Section 2(a) of its Constitution and By-Laws, the incorporated Automotive Retailers Association had as one of its objects the acquisition and taking over of the unincorporated Association.

Paragraph 5 of the Statement of Evidence also contains the following information concerning the Retail Merchants' Association of Canada:

"The Retail Merchants' Association of Canada was incorporated by special act of the Parliament of Canada being S.C. 1910, c. 156. The objects of the association as set forth in section 2 of the act of incorporation are as follows:

- '2. The objects of the Association shall be:-
- (a) the promotion of the industrial and commercial interests of the retail merchants of Canada;
  - (b) the collection and publication of information and statistics relating to or concerning such interests;
  - (c) the arbitration and settlement of trade disputes arising between any of its members;
  - (d) the procuring and furnishing to its members information as to the solvency of persons who deal with any of its members; and
  - (e) generally, all such other lawful and similar objects for promoting the trade interests of its members as may from time to time be determined by the Association.'

Section 3 of the act of incorporation provides that the Association may make by-laws, inter-alia, for -

- '(g) the organization of local branches of the Association in any part of any province in Canada, and the definition of the constitution, government, powers and functions of every such branch, but so as to not exceed the powers of the Association itself under this Act;'

The R. M. A. is organized in trade sections in British Columbia, one of which is known as the Automotive Division and which, at the time of this inquiry, included retailers of gasoline."

Paragraphs 7, 8, 9, 10 and 11 of the Statement of Evidence read as follows:

- "7. All of the individuals named in paragraph 6 hereof, except James Lloyd Kinneard, George R. Matthews and Edward Alexander Bence, are or have been from time to time or at all times during the period covered by this Statement, members of the Central Council, which was and is the executive body of A. R. A. and of A. R. A., Inc. and own or operate retail gasoline outlets in the Vancouver area.

8. During the period covered by this statement, Collin Virteau was president of A. R. A. and of A. R. A. , Inc. and as such presided at meetings of the Central Council hereinafter referred to.
9. James Lloyd Kinneard is an employee of the R. M. A. and has acted in a secretarial capacity for A. R. A. and A. R. A. Inc. , during and since the organization of those bodies.
10. Edward Alexander Bence, at all material times during the period covered by this statement, has been employed by the Standard Oil Company of British Columbia Limited.
11. George R. Matthews is an employee of the R. M. A. and at all material times during the period covered by this statement has been General Manager of the British Columbia Board of that Association. "



## CHAPTER III

### PROCEEDINGS BEFORE THE RESTRICTIVE TRADE PRACTICES COMMISSION

In accordance with Section 18(1)(b) of the Combines Investigation Act, the Statement of Evidence was submitted to the Restrictive Trade Practices Commission and also to each of the persons against whom an allegation was made therein. The Commission, by an order dated December 29, 1952, originally fixed Tuesday, February 3, 1953, at the hour of 10 o'clock in the forenoon in a room of the Supreme Court on the fourth floor of the Court House, 800 West Georgia Street, in the City of Vancouver in the Province of British Columbia, as the date, time and place at which argument in support of the Statement of Evidence could be submitted and at which persons against whom any allegation had been made in such Statement would be allowed full opportunity to be heard in person or by counsel, the whole in compliance with Section 18(2) of the Act,

At the request of Counsel for various interested parties, this date was subsequently set back to March 26, 1953, at which date the hearing opened in the Court House in Vancouver. The following appearances were registered:

D. McK. Brown, Esq., and  
S. F. Sommerfeld, Esq.

For Director of Investigation  
and Research (Combines  
Commissioner);

D. N. Hossie, Esq., Q.C.

For all of the individuals mentioned in paragraph 6 of the Statement of Evidence except George R. Matthews and Edward Alexander Bence, and, conditionally only, for the Automotive Retailers Association, Incorporated;

T.G. Norris, Esq., Q.C., and  
George Cummings, Esq.

For Retail Merchants'  
Association of Canada and  
George R. Matthews;

C. K. Guild, Esq., Q.C., and  
O. N. Lundell, Esq.

For Standard Oil Company of  
British Columbia Limited  
and Edward Alexander  
Bence;

E. M. Russell, Esq., and  
R. J. McMaster, Esq.

(By special leave and consent)  
for certain interested  
clients.

1. Argument Concerning Jurisdiction of the Commission  
to Deal with the Automotive Retailers Association

The inclusion of the Automotive Retailers Association in the list of the parties against whom allegations of misconduct were imputed brought a conditional appearance by Counsel, Mr. D. N. Hossie, Q. C., on behalf of the Automotive Retailers Association, Incorporated. Counsel's submission in explanation of his appearance being conditional only is found at pages 311 to 315 of the transcript of the hearing before the Commission, and may be put thus:

No report may be made to the Minister of Justice against the incorporated Automotive Retailers Association because -

(a) The Automotive Retailers Association, Incorporated, is not one of the parties against whom allegations were made by the Combines Commissioner in the Statement of Evidence; and

(b) The Statement of Evidence was not sent to nor served upon the Automotive Retailers Association, Incorporated, at its registered address, as required by Sections 29 and 55 of the Societies Act of British Columbia.

We deem it in order, before proceeding further with this report, to examine the two propositions advanced by Counsel for the Automotive Retailers Association, Incorporated:

(a) Automotive Retailers Association, Incorporated, not  
a Party

In support of his contention that the Automotive Retailers Association, Incorporated, has not been made a party to the proceedings and is not one of the parties against whom allegations were made by the Director of Investigation and Research under Section 18 of the Combines Investigation Act, R.S. 1927, c. 26; 1952, c. 39. Counsel pointed to paragraph 6 of the Statement of Evidence, on page 5, which reads as follows:

"The evidence indicates that the following have been principally concerned in the misconduct described in this statement:

. . .  
Automotive Retailers Association  
. . . "

The name, "Automotive Retailers Association, Incorporated", does not appear in the paragraph.

The Automotive Retailers Association, Incorporated, not being described as such in paragraph 6, its attorney submitted that it was the intention of the Director not to charge that organization. This contention cannot be upheld, for the reasons stated hereunder.

A careful reading of Part I of the Statement as drafted, namely, the portion entitled, "General Statement", where the substantial allegations are formulated, cannot but convince one that the Statement is clearly directed against the Automotive Retailers Association, Incorporated, as being one of the parties implicated in the alleged misconduct.

The first two pages of paragraph 5 of Part I consist of an analysis of the formation, nature, by-laws, etc., of the Automotive Retailers Association, Incorporated. The unincorporated Association of the same name is clearly referred to therein as having been one of the stages in the ultimate formation of the incorporated Association.

In paragraph 7 of the Statement, the Director alleges that all of the individuals named in paragraph 6, with the exception of three, "are or have been from time to time or at all times during the period covered by this Statement, members of the Central Council, which was and is the executive body of A. R. A. and of A. R. A., Inc. and own or operate retail gasoline outlets in the Vancouver area".

In paragraph 8 Collin Virteau is said to have been "president of A. R. A. and of A. R. A., Inc. and as such presided at meetings of the Central Council" during the period covered by the Statement.

In paragraph 9 James Lloyd Kinneard is implicated, both as being a member of the R. M. A. and as having "acted in a secretarial capacity for A. R. A. and A. R. A., Inc., during and since the organization of those bodies".

It seems very clear to us that, if the Combines Commissioner did not intend to implicate the incorporated Association in the Statement made to this Commission, the Statement would have varied in several respects from the form in which it was drawn:

(1) He (the Commissioner) would not have found it necessary to deal with the activities of the Automotive Retailers Association, Incorporated, since the latter's incorporation:

(2) He would not have found it necessary to implicate the individuals concerned as a result of their activities in and on behalf of the Automotive Retailers Association, Incorporated;

(3) He would not have mentioned the said Automotive Retailers Association, Incorporated, directly in Part I of the Statement of Evidence, which is exclusively concerned with the formulation of the allegations as such;

(4) He would not have submitted the Statement of Evidence to the said Automotive Retailers Association, Incorporated, because there would have been no reason for him to do so.

Even if there were any possibility of a misunderstanding as to the meaning of the expression, "Automotive Retailers Association", in paragraph 6 of the Statement of Evidence at the time such Statement was submitted, no doubt can now exist that this expression relates to the incorporated as well as to the unincorporated A. R. A. As a matter of fact, in the course of the hearing before this Commission a document was filed as Exhibit H20, which will be dealt with more fully hereunder, and which purports to be a certified copy of a notice of office registration under Section 29 of the Societies Act of British Columbia, R.S.B.C. 1948, c.311. This notice was filed on the 1st of March, 1952, on the date of incorporation of the Association. The Association itself, in this document, described its name as "AUTOMOTIVE RETAILERS ASSOCIATION".

Further, even if no allegations against the incorporated Automotive Retailers Association were contained in the Statement of Evidence, the Commission would not be precluded from dealing with that body and its relationship to the facts under inquiry.

Subsection (1)(b) of Section 18 of the Act as it presently stands imposes upon the Director the obligation to submit his Statement of Evidence "to each person against whom an allegation is made therein"; Subsection (2) of Section 18 directs the Commission to fix a place, time and date "at which such persons against whom an allegation has been made in such statement shall be allowed full opportunity to be heard in person or by counsel". But, by Subsection (4) of Section 18, a further obligation is imposed upon the Commission over and above the obligation to hear persons so alleged against. It is that, "No report shall be made by the Commission . . . against any person unless such person has been allowed full opportunity to be heard as provided in subsection two". If Subsection (4) of Section 18 was not intended to provide for cases in which the Commission might deem it advisable to report against persons other than those mentioned in the Statement of Evidence, but who were implicated in some way in the proceedings before the Commission, there would be no need for the subsection. Subsection (2) would completely cover the case.

(b) Statement of Evidence Not Properly Sent or Served

Mr. Hossie filed as Exhibit H20 a "Notice of Registered Office" under the British Columbia Societies Act, being a certified true copy of the original registered on March 1, 1952, indicating "that the registered office of AUTOMOTIVE RETAILERS ASSOCIATION will be situate at 202-744 West Hastings Street, Vancouver, British Columbia", and stated that the Statement of Evidence had been sent to the incorporated society, not at that registered address, to wit, Room 202, but to Room 218, 744 West Hastings Street. His conclusion was that this was not good service, because of Sections 29 and 55 of the Societies Act of British Columbia, R.S.B.C. 1948, c.311, which read respectively as follows:

"29. Every society shall have an address in the Province to which all communications and notices may be sent and at which all process may be served, and shall file with the Registrar notice of every change therein within fourteen days after the change is made."

"55. A document may be served on a society by leaving it at or mailing it by registered post to the address of the society as registered under this Act, or by serving a director or officer of the society."

It would first appear to us that Section 55 does not apply here, inasmuch as it refers only to the service of legal process. The word, "document", is described as follows in Section 2 of the said Act: "'Document' includes notice, order, summons and other legal process and registers:" Furthermore, Section 55 is concerned specifically with service, which is not required under the Combines Investigation Act, as will be made clear below.

As far as Section 29 is concerned, it would appear to us to impose upon any society covered by the Act an obligation to register an address ("every society shall"); whereas, in the case of any person wishing to send a communication or notice, the provision is merely permissive ("may be sent"), and would not seem to exclude any efficient way of sending any such communication or notice.

The Statement of Evidence was evidently sent and received, the reception thereof not being denied. The objection in this respect was admittedly based strictly on the ground of alleged bad service. This point is, however, provided for by Section 3 of the Combines Investigation Act, which states that: "No proceedings under this Act shall be deemed invalid by reason of any . . . technical irregularity."

Furthermore, it would appear that the address at which

the office of the Automotive Retailers Association was to "be situate", according to Exhibit H20, is not the address where the said office was in fact established. At page 261 of the transcript of her examination before the Commission, Miss Ida Hart, an accountant of the R. M. A., called by Mr. Morris and cross-examined by Mr. Brown, explained that until the 1st of January, 1953, the A. R. A. and the Automotive Division of the R. M. A. both had their office in Room 218 of the Pemberton Building, 744 West Hastings Street, Vancouver. The "A. R. A." there referred to is evidently the incorporated society, the unincorporated Association having ceased to exist on the 1st of March, 1952.

Finally, in order to comply with Section 18(1) of the Combines Investigation Act, the Statement of Evidence need not necessarily be sent to or served upon the person concerned. The Act says that it shall be "submitted" to the said person. In the case under review, the Statement of Evidence was undoubtedly so "submitted", inasmuch as it was received by the Automotive Retailers Association, Incorporated, which subsequently gave instructions to contest the validity of the alleged sending or service.

For the foregoing reasons, the Commission, after due consideration, has come to the conclusion that neither of the two propositions is sound; that the Automotive Retailers Association, Incorporated, which was incorporated under the laws of British Columbia on March 1, 1952, is one of the parties with respect to whom a report may be made to the Minister of Justice under the Combines Investigation Act; and that the Statement of Evidence was properly submitted to it in accordance with the Act. We, therefore, propose to deal with the alleged participation of the Automotive Retailers Association, Incorporated, as one of the matters validly brought before us by the Statement of Evidence.

## 2. Alleged "Wholesaler-Consumer Campaign"

Part V of the Statement of Evidence submitted by the Director of Investigation and Research (pages 32 to 38, inclusive, of the said Statement) is entitled "Wholesaler-Consumer Campaign". It deals with an alleged program designed to channel all buying of automotive parts and accessories by consumers through retail outlets, and to eliminate sales to consumers at wholesale prices by automotive supply houses and new car dealers. The program was alleged to be designed to prevent such sales, not only to individual consumers, but to consumer buying groups, such as credit unions.

At the time of the hearing, Counsel for all the parties against whom allegations had been made objected to the Restrictive Trade Practices Commission dealing with this section of the

Statement of Evidence on the ground that, under the authority delegated by the Combines Commissioner to Combines Investigation Officer J. J. Quinlan, the latter was commissioned to hold hearings on one subject-matter only, that of "the distribution and sale of gasoline" in the Vancouver area, and not on that of "automotive parts and accessories". The proposition advanced by Counsel was that the Statement of Evidence should not be concerned with matters foreign to the subject of the inquiry, all the parties and witnesses having been led to believe at all times that the investigation was concerned, exclusively with the question of distribution and sale of gasoline (including, at most, related matters). It was argued that dealing now with the matter of automotive parts and accessories would be equivalent to taking the parties concerned by surprise.

Counsel appearing for the Combines Commissioner stated that he was instructed that the so-called "Wholesaler-Consumer Campaign" was referred to in the Statement of Evidence as being related to the alleged combine in the distribution and sale of gasoline, and could, therefore, be treated as essentially linked to the original subject-matter.

In its ruling on this objection (which is contained in Appendix I to the present report), the Commission, "without attempting to formulate an interpretation of the Act for the purpose of determining the principle involved in this question", stated that it would not make a report to the Minister "with respect to parts and accessories unless it is found that there is a necessary connection between that matter and the distribution and sale of gasoline".

After having reviewed the transcript of all the evidence, the Commission has formed the opinion that the matter of such alleged combine in the distribution and sale of automotive parts and accessories should be considered as a distinct subject-matter rather than as related to that of the distribution and sale of gasoline. The facts alleged under that heading would be long subsequent to those referring to the arrangement on gasoline, and would at most tend to indicate that this matter of a so-called "Wholesaler-Consumer Campaign" was at a merely incipient stage at the time when the investigation of the Combines Commissioner into the distribution and sale of gasoline in the Vancouver area ended. The Commission, therefore, does not propose to deal with this question in this report.

### 3. Preliminary Objections to Jurisdiction

At the outset, Counsel appearing for the several persons and corporations named in allegations contained in the Statement of Evidence presented to the Commission raised a number of preliminary objections to the jurisdiction of this Commission to proceed with the

hearing at all, even with relation to the distribution and sale of gasoline. Following the completion of argument on these objections, the Commission reserved its decision. Counsel for all parties then agreed to proceed with argument on the merits, without prejudice to any rights they might have under these preliminary objections.

The members of the Commission then advised Counsel that, if the Commission should rule against these objections in whole or in part, they would so advise Counsel for all parties before proceeding to prepare the Commission's report to the Minister.

Subsequent to the hearing, after due consideration of all the questions raised on the several objections to jurisdiction, the Commission decided that it had jurisdiction in the matter, and that the proceedings had been initiated and continued in accordance with the Act. As related above, however, we decided not to report on the so-called "Wholesaler-Consumer Campaign", in respect of which allegations are made on pages 32 to 38, inclusive, of the Statement of Evidence.

The rulings made by the Commission on the preliminary objections to jurisdiction are dated July 6, 1953. They were submitted to all the parties concerned through their respective Counsel. The rulings are annexed to the present report as Appendix I.

One of the objections to the jurisdiction of the Commission was made on behalf particularly of Mr. George R. Matthews, the General Manager of the British Columbia Board of the Retail Merchants' Association of Canada. It was based on the fact that Mr. Matthews, who had not been called as a witness at the original hearing before Combines Investigation Officer J. J. Quinlan, was now ill and declared by his doctor not to be in a state of health which would permit him to appear before the Commission. According to Counsel, Mr. George R. Matthews could not, therefore, "be allowed full opportunity to be heard in person or by counsel", as provided for by Section 18(2) of the Combines Investigation Act. As appears from our ruling on the first part of the eighth objection, this submission was not upheld by the Commission, but that ruling ended by stating:

"Notwithstanding the conclusion to which it has come, and without prejudice thereto, if, within three weeks from the date appearing on these rulings upon preliminary objections, the Commission is advised by Mr. Matthews or his Counsel, Mr. Norris, that Mr. Matthews is able to appear before the Commission and desires to do so, the Commission will fix an early date and a place at which he will be given a further opportunity to be heard in person."

On August 6th, 1953, Counsel for Mr. George R. Matthews

and the Retail Merchants' Association telegraphed the Chairman of this Commission as follows:

"REFERENCE MATTHEWS AND RETAIL MERCHANTS ASSOCIATION MY WIRE OF JULY 23RD AND YOUR REPLY OF JULY 25TH STOP CLIENTS HAVE NOW HAD OPPORTUNITY OF PERUSING TRANSCRIPT AND ARE OF OPINION THAT MATTHEWS EVIDENCE WOULD NOT PROVIDE ADDITIONAL WEIGHT TO PRESENTATION OF EVIDENCE AND ARGUMENT PREVIOUSLY SUBMITTED SUFFICIENT TO WARRANT PUTTING HIM UNDER STRAIN OF TESTIFYING BEFORE COMMISSION IN VIEW OF UNCERTAINTY OF HIS PHYSICAL CAPABILITY AS INDICATED BY PHYSICIAN STOP IT IS NOT PROPOSED THEREFORE TO ACCEPT PROPOSAL IN THIS RESPECT MADE BY COMMISSION IN DECISION OF JULY 6TH WRITING."

Following this telegram, Counsel for Mr. Matthews and the Retail Merchants' Association wrote the Chairman of the Commission, on August 12, 1953, declaring that Mr. Matthews' physician had advised that, unless the matter was of paramount importance to the case, he should not be called upon to testify, and that his clients were relying on the record as it then existed. Further relevant statements appear on page 2 of the letter, and read as follows:

"Mr. Matthews is seventy-two years of age. His illness has affected his memory and has left him in an extremely nervous state. The best that can be said for him is that it is uncertain as to what improvement there will be.

My clients have therefore instructed me to advise you that under the circumstances they are content to rely on the evidence adduced before the hearing and the argument put forward at that time."

On August 20, 1953, notice was given to the Commission that an application for a writ of prohibition was to be presented on behalf of Edward Alexander Bence with a view to prohibiting the Commission and its members "from making or transmitting to the Minister of Justice any report affecting or concerning . . . Edward Alexander Bence . . . pursuant to a purported hearing by the said C. Rhodes Smith, Q. C., and the said Guy Favreau, two of the afore-said persons, sitting as the Restrictive Trade Practices Commission".

Although the application was made on behalf of only one of the parties against whom the Combines Commissioner had made an allegation in the Statement of Evidence, viz., Edward Alexander Bence, an official of the Standard Oil Company of British Columbia Limited, the principle invoked in support of the application, if upheld by the

Court, would have applied to all the other parties mentioned in the Statement. Therefore, in order to avoid any possible discrimination and also in deference to the Supreme Court of British Columbia before whom the application for writ of prohibition was pending, the Commission refrained from further proceeding with their report until the Court's decision became known.

The application has now been disposed of. The writ of prohibition was disallowed by Mr. Justice Davey in a judgment dated November 13, 1953.

#### 4. Position on the Merits of the Case Taken by the Respective Parties

At the formal hearing held at Vancouver by the Restrictive Trade Practices Commission on March 27 and 31 and April 1, 1953, witnesses were called by Counsel, namely: Dr. Henry W. Purdy and Professor Lawrence M. Vukelich, both economists, examined as experts by Mr. Hossie on behalf of the parties represented by him; and Mr. John C. H. Hart, a service station operator of Victoria, also examined by Mr. Hossie; and, finally, Miss Ida Hart, an accountant in the service of the Retail Merchants' Association of Canada, examined by Mr. Norris on behalf of the R.M.A. and of Mr. George R. Matthews.

At the beginning of the hearing, the parties involved did not state explicitly whether they were taking issue with both the facts as recited in the Statement of Evidence, and the conclusions, or only with the conclusions contained therein. However, a review of the testimony of the experts and of the final arguments by Counsel brings out the position taken respectively by the parties mentioned as being substantially as follows:

(1) As regards Standard Oil Company of British Columbia and its General Sales Manager, Mr. Edward Alexander Bence, it was contended that, if arrangements in the nature of those described in the Statement of Evidence were made, neither the Company nor Mr. Bence took any part therein; that, on the face of the evidence, there was no action taken by them which could be said to make them parties to or privy to a combine within the meaning of the Combines Investigation Act.

(2) As regards the Retail Merchants' Association of Canada and Mr. George R. Matthews, it was contended that, if arrangements such as those referred to were made, the Retail Merchants' Association of Canada does not appear to have been in any way instrumental in their formation or carrying out; that, when Mr. Kinneard acted as Secretary for the A.R.A. or the A.R.A.,

Inc., or for the district meetings of these Associations, he was not acting either in the name of or as an employee of the Retail Merchants' Association of Canada, which could not be made responsible for his acts on these occasions; that Mr. George R. Matthews was the only person authorized to act in the name and as a representative of the R. M. A., and that he did not participate in any way in any arrangement which may have existed.

(3) As regards Mr. J. L. Kinneard, the A. R. A., the A. R. A., Inc., and the individual gasoline station operators mentioned in the allegations of the Statement of Evidence, it was contended that none of them was a party to or privy to a combine within the meaning of the Combines Investigation Act, more particularly in that -

- (a) The movement of the price of gasoline in the Vancouver area following decontrol by provincial authorities was the mere consequence of the play of normal economic factors;
- (b) The cents per gallon markup theretofore in force was bound to be replaced by a percentage markup, in accordance with the practice in all sections of the trade, as soon as controls were released;
- (c) In view of comparative practices in other provinces, and also in view of the particular exigencies and factors of the business of gasoline distribution and sale in the Vancouver area, a 20 per cent markup on the wholesale tank-wagon price plus tax was the minimum markup which could have been expected to be adopted by the operators concerned;
- (d) There was no public detriment.

From the evidence and arguments of Counsel, it appears that none of the parties specifically denied the existence of arrangements intended to establish a common markup on cost, and, consequently, a common resale price for gasoline. On the other hand, none of them expressly admitted the existence of such arrangements or their respective participation therein or privy thereto. Therefore, we propose to devote a later chapter of this report to the examination of the status of each of these parties, or of each group of parties, with respect to the facts disclosed, after a review of the facts as revealed by the evidence.



## CHAPTER IV

### FACTS DISCLOSED BY THE EVIDENCE

#### 1. Preliminary

##### Types of Retail Outlets for Gasoline in Vancouver

From the evidence it appears that there are three types of retail outlets for the sale of gasoline in the Vancouver area. These may be described as follows:

(1) Operator-Owned. In this type the operator of the gasoline outlet owns the land, buildings and equipment necessary for the handling and sale of gasoline.

(2) Leased. In this type the land, buildings and equipment are owned by an oil company, which leases them to the operator, who, in turn, sells the gasoline and other petroleum products of the lessor. In this type of outlet the operator is in business for himself, receives no salary or wage from the oil company, and pays rent for the premises.

(3) Oil-Company-Owned-and-Operated. In this type an oil company owns the land, buildings and equipment, and hires the operator to run the outlet for the company at a certain salary. The manager is an employee of the oil company. He is not in business for himself, and he pays no rent for the premises.

According to the evidence of Mr. Virteau, the second type, that is, the outlet owned by an oil company but leased to an operator, is predominant in the Vancouver area. (Evidence, July 30, 1951, Vol. 3, p. 320.) At the time of this inquiry there were apparently only five stations of the third type operating in the Vancouver area, all of which were owned by the Standard Oil Company of British Columbia Limited. That company also owns a considerable number of leased outlets throughout the area.

##### Provincial Government Control

Prior to April 18, 1951, the retail price of gasoline was controlled in British Columbia by a provincial government board,

the Coal and Petroleum Control Board, which was established in 1937 by the Coal and Petroleum Products Control Board Act (B. C. Statutes of 1937, c. 31). This statute is now found as Chapter 54 of the Revised Statutes of British Columbia, 1948. The Board had the power to make regulations, and it did make regulations from time to time, fixing a specified wholesale price for gasoline, and a specified retail margin for different areas throughout the province. By these regulations the price of gasoline was controlled in the Vancouver area until April 18, 1951. The Coal and Petroleum Products Control Board Amendment Act of British Columbia, which was given formal assent on April 18, 1951, repealed those provisions of the Coal and Petroleum Products Control Board Act under which the Board had been empowered to make regulations prescribing prices and margins for gasoline. Since that date (April 18, 1951), there has been no provincial government control of the price of gasoline in British Columbia. The facts with which this inquiry is concerned occurred at the time of and shortly after the termination of such control.

The following recital of facts concerning the organization of the Automotive Retailers Association, and activities which culminated on July 10, 1951, in a uniform increase in the retail price of gasoline in the Vancouver area, is taken, in the main, from the Director's Statement of Evidence. After a careful examination and appraisal of the evidence, both oral and written, taken throughout the inquiry by the then Commissioner and his investigating officers, and the additional evidence given at the hearing before the Commission, this Commission is satisfied that this recital states fairly and accurately the facts disclosed by the evidence. The Commission has also noted that none of the facts set out hereunder was controverted before us, though Counsel for the parties made strong representations as to their effect and economic purport. [N. B. - Verbatim quotations from the Director's Statement of Evidence are inset.]

2. Action by Automotive Division of the Retail  
Merchants' Association, following Decontrol  
of Gasoline in British Columbia

The Retail Merchants' Association of Canada, whose incorporation and objects have already been described in this report, has a provincial office in the City of Vancouver, British Columbia. The provincial office has general charge of the work of the Association in the Province of British Columbia. In that province the Association is organized in trade sections, one of which is known as the Automotive Division. At the time of this inquiry, the Automotive Division had been in existence for some years, and had acted as the representative spokesman for the automotive trade. It included retailers of gasoline, but neither in the City of Vancouver nor in the Province of British Columbia as a whole did its membership include

more than a minority of gasoline retailers.

. . . When it became apparent that the Province of British Columbia intended to de-control gasoline, at least insofar as prices were concerned, a committee of retailers, representative of the Automotive Division of the R. M. A. went to Victoria for the purpose of making representations to the provincial government to reconsider its decision and to maintain controls upon gasoline. Mr. Virteau indicated in his evidence that the impression left by the meetings in Victoria was that certain members of the provincial government had advised or instructed the gasoline retailers to strengthen their own organization so as to enable them to police any situation that might arise as a result of the decontrol of gasoline. However, when asked about these conversations, Mr. Virteau gave the following evidence:

- "Q. But there was no formal requesting of that kind, was there?
- A. No, but it was intimated, and it was intimated by different men.
- Q. Well, is the effect of what was said this:  
'That as you were no longer to be under Government control, you were then on your own, and it was up to you to take such steps as you deemed necessary in your own interests?'
- A. That is correct. That was because --
- Q. I don't want to put words in your mouth --
- A. No.
- Q. And I don't want you to agree I have stated the facts of anything unless that is so.
- A. No, that is what was intimated to us, due to the fact that decontrol was going to take effect, that we should get ourselves in a position to look after our own affairs.
- Q. The same as any other industry has the right to look after its products?
- A. Yes, because in our talks we referred back to the conditions that existed before and there was a terrible upset in the business and when I say there were literally dozens of dealers that folded up, there were

a great many and if they didn't fold up, they had got themselves into such difficulties, it took them years to get out of it."

(Evidence [August 1, 1951],  
Vol. 3, pp. 258-9)

Following the representations made by this delegation to the provincial government, a bulletin (Exhibit 2) dated March 15th, 1951, was circulated by the R. M. A. reporting that the representations had been unsuccessful. A questionnaire (Exhibit 2) accompanied this bulletin which the recipients were invited to sign and return to the association.

This latter document, which might more properly be described as a form of undertaking, read as follows:

"Because the spread of gasoline in British Columbia is the lowest in the Dominion of Canada, and because it does not permit of a very profitable operation, I/we agree to co-operate with our fellow service station operators throughout the Province in maintaining the present spread. AND FURTHER AGREE THAT AT THE FIRST INCREASE IN THE WHOLESALE TANK WAGON PRICE, WE WILL INCREASE OUR SPREAD BY ONE CENT PER GALLON."

The bulletin, along with the form of undertaking, was sent to gasoline retailers in the Vancouver area who were not members of the Automotive Division of the Association. It was also sent to gasoline retailers throughout the rest of British Columbia, whether they were members of the Automotive Division or not. Members of the Automotive Division in the Vancouver area did not receive these documents, because a notice had been sent to them of a general meeting of the Automotive Division, to be held on March 19th, 1951, at which meeting they were to be given the same information as was contained in the bulletin.

According to the evidence of Mr. Kinneard, who was present in the capacity of secretary of the Division, only about 20 or 25 persons, all members of the Automotive Division of the R. M. A. attended the meeting held on March 19th, 1951 in Salon C of the Hotel Vancouver. The minutes of this meeting (Exhibit 3) record that while the members present felt that it would be desirable to increase the retail margin on gasoline to 6 cents, they also felt that it might be difficult to establish and maintain such a margin.

A meeting of the Executive of the Automotive Division was held on April 20th, 1951 at the Melrose Cafe in Vancouver. Present at that meeting were Messrs. Mott,

Hammond, Higgins, Hale, Gordon, Henry, Howe, Lockyer, Martin, Virteau, Smith and Matthews. Mr. Kinneard was again present as secretary of the Division. Messrs. Hammond and Gordon were elected chairman and vice-chairman of the executive, respectively. The minutes of that meeting (Exhibit 4) record that Mr. George R. Matthews, the General Manager of the British Columbia Board of the R. M. A. reported that the price of gasoline would be increased by three-tenths of a cent a gallon at the wholesale level on April 23rd, 1951 and Mr. Collin Virteau recommended very strongly that the retail margin on gasoline should then be increased from 5 cents to 6 cents per gallon. The question of making a press announcement that the price of gasoline would be increased 1 cent was also considered, but in view of the fact that the replies to the questionnaires sent out on March 15th did not guarantee that such a raise would be approved by a sufficient number, Mr. Matthews recommended that no action should be taken along this line. It was suggested instead that neighbourhood meetings of service station operators should be held with a view to getting their support on any increase in the margin on gasoline.

### 3. Preliminary Organization of Automotive Retailers Association

The Executive Committee of the Automotive Division of the R. M. A. decided that a series of meetings of retailers should be held in the Vancouver area with a view to discussing the action of the provincial government and deciding what steps, if any, ought to be taken by the retail trade as a result of the government's decision to decontrol gasoline.

The Executive Committee of the Automotive Division learned that a group of service station operators had been holding meetings in the Kerrisdale-Marpole area [of Vancouver] for much the same purpose, although these operators were not members of the Automotive Division of the R. M. A. The group from the Kerrisdale-Marpole district appointed four service station operators as their representatives and asked to confer with a similar committee appointed by the Executive of the Automotive Division. The committee appointed by the Automotive Division consisted of Mr. Tom Hammond, the head of the Automotive Division of the R. M. A. in British Columbia, Mr. Joel Gordon, Mr. A. Higgins and Mr. Collin Virteau. The representatives of the Kerrisdale-Marpole retailers were Mr. S. Morrey, Mr. Jack Dunn, Mr. R. Dean and Mr. Pete Dockstader. The meeting was held on May 7th, 1951 at Brown Brothers Station at 41st and Granville Streets in the city of Vancouver. Mr. Kinneard also attended as secretary, but he

kept no formal minutes.

On May 11th, 1951, the four persons representing the Executive Committee of the Automotive Division made their report on the meeting with the Kerrisdale-Marpole group at a meeting of the R. M. A. Automotive Division Executive. Present at that meeting were Messrs. Hammond, Higgins, Mott, Virteau, Lockyer, Howe, Martin, Henry, Smith, Hale, Matthews and Kinneard. Mr. Hammond reported that it had been decided that it would be advantageous to set up an entirely new, independent automotive organization along the following lines indicated in an extract from the minutes of the meeting of May 11th (Exhibit 5):

- "1. Organize ten local groups under the auspices of the R. M. A.
2. All membership for the time being will be in the R. M. A.
3. In due course, a new organization would be set up.
4. Each Local Group would be represented by a delegate elected by the members.
5. This central council of delegates would negotiate affiliation with the R. M. A. on the following basis:
  - (a) A fixed charge and a fixed minimum number, paid yearly in advance for specified services.
  - (b) Special campaigns to be paid for as requested.
  - (c) R. M. A. to comply with such requests at their discretion.
  - (d) At the time of affiliation, R. M. A. to give credit for membership for any unexpired new memberships."

. . .

"It was then moved by Mr. Higgins and seconded by Mr. Virteau, 'That we, the Executive of the Automotive Division, with the help of the Marpole Committee, proceed with the organization of the City into districts; that two delegates be appointed in each district to negotiate with the present R. M. A. Executive and office as to the affiliation and terms of such affiliation, and the services such affiliation requires: it to be clearly understood that affiliation with the R. M. A. is an essential part of such organization; and that all members be required to show good faith by taking out an interim membership for six months with an allowance to be made for any unexpired new membership at the time of the organization of the new association.'

Carried unanimously."

(Exhibit 5)

It should be noted that, whereas the original recommendation of the Joint Committee (as shown in the quoted extract from the minutes of the meeting of May 11th) had proposed that "each Local Group would be represented by a delegate elected by the members", the motion which has just been quoted and which was carried unanimously at the meeting of the Executive Committee of the Automotive Division on May 11th called for "two delegates [to] be appointed in each district". (Exhibit 5.)

The minutes furnish no explanation of or reason for this change in the proposed plan, but before setting out the motion, they do state that, "The Executive then discussed at considerable length the proposed basis of organization of any new Association which might be formed."

Shortly after the meeting of the Executive Committee of the Automotive Division of the R. M. A. on May 11th, the Joint Committee, sometimes referred to as the Steering Committee, consisting of the representatives of the Automotive Division Executive and the Kerrisdale-Marpole group held another meeting at Brown Brothers Limited, 41st and Granville Streets in the City of Vancouver. Present at that meeting were Messrs. Tom Hammond, Joel Gordon, Collin Virteau, Al. Higgins, representing the Automotive Division, and Messrs. S. Morrey, Jack Brown, Jack Dunn and R. Dean, representing the Kerrisdale-Marpole group. Mr. Kinneard was also present. At that meeting, Mr. Hammond, who was spokesman for the R. M. A., reported that the R. M. A. was prepared to agree in principle to the recommendations of the Joint Committee. This was confirmed by the evidence of Mr. Kinneard (Evidence [July 30, 1951], Vol. 1, pp. 38-9). As a result of inquiries that had been made by the R. M. A. from the gasoline retailers associations in Alberta, Manitoba and Ontario, it was felt that it would be more satisfactory to calculate the retailers' margin by adopting a percentage mark-up on cost rather than a fixed mark-up of so many cents per gallon. It was learned that the margin being enjoyed by retailers in Alberta was 17 per cent on cost, in Manitoba 17 per cent on cost, and in Ontario 20 per cent on cost. This information was secured by Mr. George R. Matthews, the General Manager of the R. M. A. for British Columbia, by writing to the associations in these various places. At this second meeting of the Joint Committee it was also definitely decided that a separate organization should be formed in British Columbia. Mr. Kinneard had at this time divided the city into ten zones, later enlarged to fifteen, to include adjacent areas, for the purpose of establishing areas within which meetings of retailers could be held, and the Joint Committee had arranged through Mr. Matthews to make Mr. Kinneard available for clerical and executive work in this connection. Mr. Kinneard was instructed to arrange for meetings in these

zones. The meeting also adopted the name of Automotive Retailers Association or A. R. A. as the official name of the new organization.

The areas covered by the fifteen zones in the Vancouver area, according to the evidence of Mr. Kinneard (Evidence [July 30, 1951], Vol. 1, pp. 53-8) were as follows:

Zone No. 1, Hastings East

The area bounded on the west by Jackson Avenue, on the north by Burrard Inlet, on the east by Boundary Road, and on the south by Georgia Street.

Zone No. 2, Grandview

The area bounded on the north by Georgia Street, on the east by Boundary Road, on the west by Jackson Avenue or Terminal Avenue, and on the south by 22nd Avenue.

Zone No. 3, Kingsway

Kingsway from Main Street to Boundary Road.

Zone No. 4, South Vancouver

The area bounded on the north by Kingsway, on the east by Boundary Road, on the south by Marine Drive, and on the west by Ontario Street.

Zone No. 5, Fairview

The area bounded on the north by False Creek, on the east by Ontario Street, on the west by Hudson Street, and on the south by 26th Avenue.

Zone No. 6, Kerrisdale-Marpole

The area bounded on the north by 16th Avenue, on the west by Blenheim Street, on the south by the Fraser river, and on the east by Hudson Street, and covering what is called the Marpole industrial area.

Zone No. 7, Dunbar-Point Grey

The area bounded on the north by 8th Avenue, on the east by Blenheim Street, on the south by Marine Drive, and on the west by the city limits.

Zone No. 8, Kitsilano

The area bounded on the north by English Bay, on the west by McDonald Street, on the south by 16th Avenue, and on the east by Hudson Street.

Zone No. 9, West End

The area west of Granville Street.

Zone No. 10, Downtown

The area bounded on the west by Granville Street, on the east by Jackson Avenue, and extending from False Creek to Burrard Inlet.

Zone No. 11, Richmond

Sea Island, Lulu Island, and Twigg Island.

Zone No. 12, West Vancouver

The area comprising the West Vancouver municipality.

Zone No. 13, North Shore

The city and district of North Vancouver.

Zone No. 14, New Westminster

The city of New Westminster.

Zone No. 15, Burnaby

The municipality of Burnaby.

Mr. Kinneard indicated in his evidence that while the boundaries given indicated the general area covered by each zone, geographical reasons might require a few stations nominally situated in one zone to be included in an adjacent zone.

From Mr. Kinneard's evidence concerning the meeting of the Joint or Steering Committee which followed the May 11th meeting of the Automotive Division Executive, it does not appear that the proposal to elect two delegates from each zone or district instead of one was there discussed. What did happen was that at the first zone meeting (held in the Kerrisdale-Marpole area), Mr. Kinneard read the motion of May 11th proposing two delegates. Apparently, two delegates were then elected, without discussion of the principle. Subsequently, two delegates were elected in each of the other zones.

#### 4. Zone Meetings

The first group meeting was held in Zone 6, the Kerrisdale-Marpole area, on May 17th, 1951. Although he kept no minutes of that meeting, Mr. Kinneard, who was present, testified that about 35 persons attended and they approved the formation of a new association. According to Mr. Kinneard, the 35 persons represented a substantial majority of the gasoline retailers in the district. Mr. Kinneard had prepared a form of application for membership in the A. R. A. and these forms were distributed to those present at the meeting. The meeting also approved the adoption of a margin on gasoline calculated as a percentage of the cost. The Kerrisdale-Marpole group was in agreement that the recommended margin should be 20 per cent, calculated on the tank wagon price plus tax. However, the question of what percentage would be adopted and when it would come into force was left until all the groups had met. The two delegates from each group would then meet to arrive at some common understanding. Mr. Kinneard's evidence was as follows:

"Q. And the representations as to percentages would have to be considered and some percentage agree[d] on by all?

A. Yes, when the others have an opportunity of presenting their views."

(Evidence [July 30, 1951],  
Vol. 1, p. 66)

Referring to the discussion at this meeting regarding the fixing of a common mark-up on gasoline and the date that it was to be made effective, Mr. Kinneard stated:

"The question was asked, when would this come into force and so on. It was apparent that you could not have one group coming in one after another and the question was, 'What is the chap across the street doing? What is the practice?' And having approved of the plan, it was considered it was in the best interest to put it through in one day, and they anticipated holding other meetings in other areas and it would have to be determined whether this 20 per cent would be acceptable or if they would like to have another percentage, and after all the areas had met, they would then decide what they should do, and there would be an

established price recognized the same as it always had been."

(Evidence [July 30, 1951],  
Vol. 1, p. 64)

Mr. S. Morrey and Mr. Collin Virteau were elected delegates to the Central Council at this meeting. Mr. Morrey produced minutes of this meeting (Exhibit 69) which he identified as having been prepared by Mr. Will Dockstader, indicating that 28 persons were present.

The date of this meeting, as shown by the minutes, is given as May 16th. However, this appears to be incorrect. Mr. Morrey's evidence (Vol. 6, p. 759) fixed it definitely as May 17th.

While the minutes record that "the members present felt that the margin should be at least 20%" Mr. Morrey was unable to recall whether there was a formal resolution passed relating to the percentage mark-up on gasoline.

(Evidence August 6, 1951 ,  
Vol. 6, pp. 760-1)

On May 3, 1951, Mr. Al Higgins called a meeting of service station operators in the Grandview district to be held at the Commercial Drive Garage on May 8, 1951. The notice of the meeting, which was dated May 3 and which went out over the names of Mr. A. Higgins, Mr. Syd. Lockyer and Mr. Ted Hale was directed to "Grandview District Service Station Operators" (Exhibit 9) and was mailed to twenty-five operators. Mr. Higgins reported on this meeting at the meeting of the Executive of the Automotive Division held on May 11, 1951 (Exhibit 5). He stated that about half of those invited to the meeting attended and that the meeting had agreed upon the following points:

- (a) approved a plan to organize the city into districts
- (b) approved the suggestion of forming a new organization affiliated with the R. M. A.
- (c) approved of an immediate increase in gasoline price spread
- (d) approved of the holding of future district meeting in the Grandview district.

This meeting was organized on the initiative of Mr. Higgins and not as a part of the plan formulated at the meeting

of the Joint Committee on May 7, 1951 and adopted at the Executive meeting of the Automotive Division on May 11th, 1951. Mr. Higgins had had the responsibility of organizing neighbourhood meetings of the Automotive Division of the R. M. A. He did not continue this form of action and the subsequent meeting in the Grandview area on June 19, 1951 was held as part of the general plan to hold meetings in all districts (Evidence [July 30, 1951], Vol. 1, p. 69).

Meetings in each of the other zones were held between May 21 and June 20, 1951 as arranged by Mr. Kinneard. These meetings were held as follows:

<u>Zone</u>	<u>Date</u>	<u>Number in Attendance</u>
No. 1, Hastings East	May 21, 1951	20 (Exhibit 11)
No. 3, Kingsway District	May 22, 1951	15 (Exhibit 13)
No. 4, South Vancouver	May 28, 1951	22 (Exhibit 14)
No. 11, Richmond District	May 30, 1951	18 (plus 4 members of Steering Committee) (Exhibit 16)
No. 5, Fairview	May 31, 1951	19 (19 persons signed the attendance sheet, but 21 voted on one motion) (Exhibit 15)
No. 7, Dunbar-Point Grey	June 4, 1951	25 (Exhibit 18)
No. 8, Kitsilano District	June 5, 1951	24 (Exhibit 19)
No. 9, West End District	June 7, 1951	14 (plus 3 members of the Steering Committee) (Exhibit 20)
No. 12, West Vancouver	June 11, 1951	18 (including 4 members of Steering Committee) (Exhibit 22)

<u>Zone</u>	<u>Date</u>	<u>Number in Attendance</u>
No. 13, North Shore District	June 12, 1951	17 (plus 4 members of Steering Committee) (Exhibit 23)
No. 10, Downtown Area	June 14, 1951	51 (Exhibit 24)
No. 14, New Westminster	June 18, 1951	21 (plus 14 visitors from Whalley, 2 from Coquelin and 3 from Vancouver) (Exhibit 26)
No. 2, Grandview	June 19, 1951	13 (Exhibit 28)
No. 15, Burnaby District	June 20, 1951	26 (including 4 or more from Steering Committee) (Exhibit 27)

Mr. Kinneard prepared notices of each meeting after discussion with three or four of the operators of the area in question, which were sent out in mimeographed form over the names of three or four of the operators to service station and garage operators in the district. The notice in each case mentioned that an effort was being made to organize service station operators with respect to the spread on gasoline, and that a definite plan would be presented to the meeting. At each meeting the operators agreed that the margin on gasoline should be increased and that the new margin should be 20 per cent of cost including tax. At each individual meeting, however, the members indicated that they would fall in line with any general plan adopted by the Vancouver area as a whole. At each meeting delegates were elected to represent their group at the Central Council. The following were elected zone delegates to the Central Council:

<u>Zone</u>	<u>Delegates</u>	
No. 1, Hastings East	Leo Mogensen, Frank Lee	(Exhibit 11)
No. 2, Grandview	Art. Mendlin, Ed. Qualey	(Exhibit 28)

<u>Zone</u>	<u>Delegates</u>	
No. 3, Kingsway	Don Anderson, Hugh Smith	(Exhibit 13)
No. 4, South Vancouver	Art Powell, Milt Read	(Exhibit 14)
No. 5, Fairview	Doug. Darling, Vern Rankin	(Exhibit 15)
No. 6, Kerrisdale- Marpole	S. Morrey, Collin Virteau	(Exhibit 17)
No. 7, Dunbar-Point Grey	Joel Gordon, Jack Reid	(Exhibit 18)
No. 8, Kitsilano	Murray Martin, Frank Murray	(Exhibit 19)
No. 9, West End	Harvey Lowe, Paul Faris	(Exhibit 20)
No. 10, Downtown	Tom Hammond, Chuck Lew	(Exhibit 24)
No. 11, Richmond	J. Gollner, Frank Quirk	(Exhibit 16)
No. 12, West Vancouver	Bill Grout, Norm. Macey	(Exhibit 22)
No. 13, North Shore	Dick Smith, Dick Kline	(Exhibit 23)
No. 14, New Westminster	Cy Mark, Dave McLennan	(Exhibit 26)
No. 15, Burnaby	Earl Parsons, Maurice Marisco	(Exhibit 27)

Application forms for membership in the A. R. A. (Exhibit 9) were distributed at each meeting. While all those present did not sign an application form at the meetings a substantial number did in each case, and further applications were received following the meeting, both from those that had attended and those that had not. The following chart indicates the number of members in the association in relation to the total number of retail outlets in each area, as at the date of the hearings in July, 1951.

Membership in the Association

<u>Zone</u>	<u>Members</u>	<u>Non-Members</u>	<u>Total</u>	
No. 1, Hastings East	23	4	27	(Exhibit 11)
No. 2, Grandview District	19	3	22	(Exhibit 28)
No. 3, Kingsway	20	10	30	(Exhibit 13)
No. 4, South Vancouver	28	12	40	(Exhibit 14)
No. 5, Fairview District	29	6	35	(Exhibit 15)
No. 6, Kerrisdale-Marpole	26	-	26	(Exhibit 17)
No. 7, Dunbar-Point Grey	29	6	35	(Exhibit 18)
No. 8, Kitsilano	32	4	36	(Exhibit 19)
No. 9, West End	30	28	58	(Exhibit 20)
No. 10, Downtown District	40	15	55	(Exhibit 24)
No. 11, Richmond District	16	11	27	(Exhibit 16)
No. 12, West Vancouver	12	-	12	(Exhibit 22)
No. 13, North Shore	20	-	20	(Exhibit 23)
No. 14, New Westminster	28	2	30	(Exhibit 26)
No. 15, Burnaby District	<u>26</u>	<u>30</u>	<u>56</u>	(Exhibit 27)
TOTAL	378	131	509	

The total of non-members includes the five company-owned Standard Oil Company of British Columbia Limited stations, and 22 garages that do not sell gasoline. Mr. Kinneard gave evidence that there are 1889 service stations and garage operators throughout the province of British Columbia. Of these, he said, 504 are located in the Vancouver area, and 1231 throughout the rest of the province with the exception of Victoria and Vancouver Island. The basis for this information is mailing lists, based on licences that had been issued by the Coal and Petroleum Board, which the Automotive Division of R.M.A. endeavoured to keep up to date. The balance would be accounted for by stations in Victoria and Vancouver Island which are not included in the activities of the Automotive Division or

A. R. A. or A. R. A., Inc. (Evidence [July 31, 1951], Vol. 2, 11. 210-14)

At each of the zone meetings Mr. Kinneard gave a report of the developments and events leading up to the calling of the meeting in each zone. He referred to the delegation that had met with the provincial government in connection with the Coal and Petroleum Board and referred to the fact that the margin on gasoline had formerly been set by the Board at 5 cents. He referred to the meetings with members of the provincial government at Victoria and to what had transpired there. He also reported that:

- (a) the executive of the Automotive Division had agreed to the holding of district meetings
- (b) that a group of service station operators in the Kerrisdale-Marpole area had been holding meetings since the decontrol of gasoline and that it was felt that neighbourhood and district meetings should be held with a view to securing the support of service station and garage operators
- (c) that it had been decided to form a Joint Committee of four representatives from the Executive of the Automotive Division of the Retail Merchants Association and four from the Kerrisdale-Marpole group to meet together to arrange the details of such meetings
- (d) that this group had evolved a plan for the formation of the new and separate association which eventually adopted the name of A. R. A.
- (e) that the four members from the Kerrisdale-Marpole group had reported back to their group and secured the support and co-operation of the operators in their district
- (f) that the four members of the Joint Committee representing the Automotive Division of the R. M. A. had had a discussion with Mr. George Matthews of the R. M. A. who had agreed that although there would be details that would have to be worked out, that the principle of the plan was quite feasible and acceptable insofar as the R. M. A. was concerned.

He further reported on the meeting of the Automotive Division Executive of the R. M. A. held on May 11, 1951 at

which the entire plan was presented to the Executive and at which a resolution embodying the plan was passed.

The plan and resolution have been fully set out earlier in this chapter when discussing the said meeting of May 11, 1951.

He also reported upon the discussion that led up to the choice of the name of the new association and reported on the correspondence with the automotive organizations in Manitoba and Ontario relating to the use of a percentage figure in calculating the mark-up on gasoline. He mentioned that the Steering Committee wished to recommend that the trade adopt the principle of calculating their marginal profit in terms percentage rather than in terms of cents per gallon. In each case the meeting was asked whether it agreed with the recommendation of the Steering Committee in this regard and it was pointed out that the Steering Committee wished to obtain the opinion of the meeting as to what they felt the percentage should be, and that other areas would be expressing their opinion, and that each area would be advised as to what the opinion was generally. He mentioned that membership for the time being would be kept in the R. M. A., that there would be an interim membership fee of \$10.00 for a period of six months but that the final decision as to the amount of fees would rest with the Central Council of delegates, which would be responsible for determining what services the trade would require. Mr. Kinneard explained that, at the other zone meetings, the expressions of opinion relating to the percentage mark-up would be recorded, that these views would be carried to the Central Council by the delegates from each group, and that the delegates would get together to find out what would be acceptable to all groups.

(Evidence [July 31, 1951],  
Vol. 2, pp. 165-76)

##### 5. Further Action by R. M. A.

A bulletin dated June 7, 1951 was sent out to gasoline retailers throughout British Columbia outside Vancouver by the R. M. A. over the signature of Mr. George R. Matthews. The bulletin (Exhibit 1) referred to the group meetings of retailers that had been held in Vancouver at which it was agreed that the minimum mark-up on gasoline should be 20%. The questionnaire of March 15, 1951 (Exhibit 2) was also mentioned:

"The Questionnaire we mailed to you on March 15th suggested increasing our spread at the same time

the tank-wagon price was increased to you, but in view of the opinion expressed by Vancouver Service Station Operators, we are now sending this Questionnaire to you to know what support we would receive to making the increased spread apply at the same time throughout the Province.

In order that you may know how this would affect you, enclosed please find a table which shows the amount of spread and retail price based on a 20% mark-up. Check it with your present spread and figure out exactly what this increase will mean to you on a year's gallonage.

. . .

Please return your Questionnaire immediately  
. . ."

The bulletin, the price chart, and the questionnaire were sent to members of the Automotive Division of R. M. A. Other gasoline retailers throughout the province also received these same documents except that the questionnaire sent to this latter group included a paragraph inviting the recipient to join the Automotive Division and pay a \$10.00 fee for six months' membership. The questionnaire invited answers to the following questions:

- (1) "Do you believe the present spread on gasoline is too low and are you in favour of increasing same?"
- (2) "Do you believe that the minimum retail price charged at all Service Stations should be determined by adding 20% to the tank-wagon price, plus tax, as set out in the schedule?"
- (3) "Do you believe the increased spread should be made effective as soon as possible and will you establish a retail price based on the mark-up as suggested in the schedule, when advised by our office?"

These documents were sent out on behalf of the Automotive Division of the R. M. A. At this point the A. R. A. was not organized outside the Vancouver area and the purpose was to keep operators throughout the province apprised of what was happening.

#### 6. Meeting of the Central Council of Delegates

Following the organization of the various zones a meeting

of the Central Council of delegates was held on June 21, 1951. Notices of the meeting were sent out through the facilities of the R. M. A. The notices went out to all the delegates that had been elected by the various groups and to all members of the original Steering Committee, and to members of the Automotive Division of the R. M. A. that had not been elected delegates. The meeting was held at the Hotel Devonshire. Mr. Kinneard did not attend but Mr. S. Dixon, a representative of a trade magazine, took minutes of the meeting. (Exhibit 38.) According to the evidence of Mr. Collin Virteau, the . . . purpose of the meeting was . . . :

" . . .

To bring together the decisions of all the previous meetings as to the agreement on the mark-up; that the mark-up on gasoline should be 20 per cent, primarily, and also to elect committees in regard to affiliation with the R. M. A. and also to elect a committee to deal with the Constitution and By-laws of the association which was to be known as the Automotive Retailers Association."

(Evidence [August 1, 1951],  
Vol. 3, pp. 287-8)

The meeting formed a temporary Executive consisting of Collin Virteau as Chairman and S. Morrey as vice-chairman, the balance of the Executive being made up of the 30 delegates and those members of the Steering Committee that had not been elected delegates. (Evidence [August 1, 1951], Vol. 3, p. 288)

At that meeting the Executive was given power to act in the event of an emergency as regards gasoline prices. A motion was also passed to the effect that the pink price chart (Exhibit 1) showing the retail prices based on a 20 per cent margin for a series of tank-wagon prices, should be sent to all service stations and garage operators with a covering letter stating that the increase would not go into effect until the tank-wagon price was raised or until the operators received word from their zone delegates.

#### 7. Adoption of 20 Per Cent Margin

According to Mr. Virteau's evidence, it had been intended originally that the 20 per cent margin should be put into effect at the next increase in tank-wagon price by the oil companies. Following the meeting of June 21, however,

considerable pressure began to build up to adopt the 20 per cent margin at once. Meetings were held in the various zones both in the Vancouver area and throughout the province, and numerous telephone calls were received by Mr. Virteau and Mr. Morrey from service station operators asking when the 20 per cent would be put into effect and urging that it be done at once. After a discussion with Mr. Morrey, Mr. Virteau telephoned Mr. Matthews to inquire how soon a new price chart could be prepared which would show retail prices based on 20 per cent for a wider range of tank-wagon prices that could be used in the interior and which would be printed on cardboard and be more durable than the pink sheet. Mr. Matthews advised Mr. Virteau that the card could be printed at once, and after some discussion Mr. Matthews suggested that the effective date for putting the 20 per cent margin into effect be fixed for July 10, 1951. Mr. Virteau then telephoned Mr. Morrey again and it was arranged between them to get in touch with each of the zone delegates with a view to getting their opinion on putting the 20 per cent margin into effect on July 10. Mr. Virteau got in touch with each of the 30 delegates by telephone and all agreed that the 20 per cent margin should be put into effect on July 10.

(Evidence [August 1, 1951],  
Vol. 3, pp. 299-309)

Mr. Virteau conferred with Mr. Morrey in connection with sending out a notice to zone delegates advising them that the new retail price chart (Exhibit 40) would be sent out and giving the effective date of the price change. Mr. Virteau then discussed the matter further with Mr. Matthews and pursuant to Mr. Virteau's instructions a notice (Exhibit 44) was sent to all zone delegates.

(Evidence [August 1, 1951],  
Vol. 3, pp. 310-11)

The notice was in the following form:

"The printed Recommended Retail Price Charts will be mailed from the office, Friday, July 6th.

Will the delegates please check to see that each Service Station in their Zone has received a card and that same is made effective Tuesday Morning, July 10."

The price card (Exhibit 40) was mailed on July 6, 1951 from the offices of the R. M. A. to 504 garages and service stations in the Vancouver area, and to 1231 garages and service stations throughout the rest of the province with the exception of Victoria and Vancouver Island. Zone delegates in each of the fifteen zones received extra copies for dis-

tribution. The card bore the words "Effective Throughout British Columbia July 10, 1951".

(Evidence [July 31, 1951],  
Vol. 2, pp. 210-12)

Non-members in the various zones were advised of the steps that had been taken by the delegates and members in their zone, and there was an effort made generally to communicate the decision to put the price rise into effect on July 10 to non-members.

(Evidence [August 1, 1951],  
Vol. 3, pp. 310-12)

Mr. Virteau testified that on July 10, 1951 the retail price of gasoline was raised by putting into effect a mark-up of 20 per cent on cost including tax. He stated that the rise was effective throughout the fifteen organized zones, both with respect to members and non-members of the A. R. A., on that date, and was fully effective within the outlying districts of the province within a week thereafter.

(Evidence [August 1, 1951],  
Vol. 3, pp. 288-90)

While the question of securing compliance with the decision to adopt the 20 per cent mark-up was discussed among the delegates, no means other than verbal persuasion by the delegates and operators were contemplated. However, Mr. Virteau stated that, from the unanimity of the members of the A. R. A. and the field work that had been done with non-members by delegates and others, no difficulty was expected in securing compliance with the 20 per cent mark-up. He gave evidence as follows:

"Q. Well the subject of securing compliance by all operators, then, was discussed?

A. Oh yes.

Q. And some procedure was laid down for assuring compliance of all the operators?

A. Yes, but in the majority of cases -- when I say the majority, I mean by that, probably about 98% of the fellows in an area -- it has been completely explained to them how costs have risen, and how costs might further rise, and it has been so completely explained to them -- the advantages

of putting it on a 100% basis, or on a percentage mark-up, which automatically takes place as far as the increase in gasoline is concerned, that they understand what has to be done.

Q. Well, do you say that that explanation had been extended to the members of the A. R. A. as well as as the non-members?

A. Yes.

Q. And did you feel from the unanimity of the members of the A. R. A. and the other steps that had been taken with regard to non-members, there would not be any difficulty in that regard?

A. Yes, we did not expect any difficulty.

Q. And from what subsequently happened, were your expectations justified?

A. More than justified.

Q. There was practically 100% compliance?

A. Yes.

. . ."

(Evidence [August 1, 1951],  
Vol. 3, pp. 314-315)

Mr. Virteau mentioned only one dealer who had voiced any opposition to the 20 per cent mark-up and that dealer had subsequently adopted the 20 per cent. That dealer was located in Abbotsford and not in the Vancouver area.

(Evidence [August 1, 1951],  
Vol. 3, pp. 315-316)

Mr. Virteau was questioned with respect to how the 20 per cent margin was arrived at in view of the fact that there was no mention of it in the minutes of the meeting of the Central Council on June 21, 1951:

"Q. Well now, what I asked you was, there was no reference in the minutes (Exhibit 38) to a 20 per cent price rise, and I wanted you to tell Mr. Quinlan how the percentage of 20 per cent was arrived at, that was put into effect on July tenth?

- A. Just a minute, that isn't too clear in my mind. I think it was brought out at that meeting. If I remember correctly it was brought out at that meeting that it was more or less reported that in all the zone meetings we have had, everyone was in agreement with a 20 per cent mark-up. Everyone was in agreement with a 20 per cent mark-up -- that that was the one to be accepted.
- Q. So the Executive, when a decision was made, felt that they were properly carrying out the wishes of all the zones in taking steps to see that that rise was put into effect?
- A. Yes, that is right. It was more or less just accepted that it was going to be 20 per cent. All zones were aware by this time that 20 per cent was the basis we should work on.
- Q. Well, let me put it this way, and you can correct it if it is not right. Was it one of the purposes of the zone meetings that each particular zone should discuss what percentage ought to be fixed, and if there was a difference in the percentages proposed, then the executive would have the problem of relating one to the other, and finally arriving at some solution which would be acceptable to all?
- A. I think that is correct up to the tenth meeting we did not advise them what had taken place in the other meetings as to their decision what the percentage should be, but I think over in North Vancouver or West Vancouver, which was our eleventh meeting, after we discussed the percentage mark-up of the Winnipeg Association and what Toronto was getting, and so forth, one of the fellows said, well what do the other zones agree on? And we felt before we made a decision as to answering that -- I think someone asked -- I think it was after all the other zones were organized and someone remarked as they represented the majority, it won't do any harm to tell them what was suggested.
- Q. So at the other meeting it was mentioned what was done at the other meetings?
- A. Yes, and that we should fall in line with what the other zones had decided on."

From the evidence of Mr. Virteau (Evidence, August 1, 1951, Vol. 3, pp. 289-290 and 327-330), there seems to be no doubt but that very quickly after the agreed-on date of July 10th, 1951, the price established by the Automotive Retailers Association became universally adhered to by dealers in the Vancouver area. The Association price was fully effective throughout the fifteen zones on July 10th, 1951, except for some five stations owned and operated by the Standard Oil Company of British Columbia Limited. These stations also adopted the price two days later, but neither the Standard Oil Company of British Columbia Limited nor the managers of these five stations became members of the A. R. A. Mr. Virteau knew of the universal adoption of the Association price throughout the Vancouver area because of a survey made by the delegates in the fifteen zones, and messages received by Mr. Morrey and himself from the delegates.

From this evidence, it is quite apparent that, after July 10th, 1951, or at any rate after July 12th, no alternative was available to the public in the fifteen zones of the Vancouver area to purchase gasoline at prices other than those established by the A. R. A. It may safely be said that, following the termination of provincial government control of gasoline prices, on April 18th, 1951, the A. R. A. was the instrument through which a set price for all retailers was attained, partly through agreement among its members and partly through their influence on non-members.

Immediately prior to April 18th, 1951, the markup allowed to retailers of gasoline in the Vancouver area was 5 cents per gallon, added to the wholesale tank-wagon price plus provincial tax. This markup applied to both regular and premium grades of gasoline. Regulation 4 (August 16, 1949) of the Coal and Petroleum Control Board had established a fixed price differential of 2 cents per gallon between regular and premium grades. The last regulation of the Board, dated October 26, 1950, provided for a wholesale price of 31.2 cents per gallon for regular grades. This price remained in effect until decontrol, on April 18th, 1951. Five days later, on April 23rd, there was an increase of three-tenths of a cent per gallon in the tank-wagon price of gasoline. This brought the tank-wagon price of regular gasoline to 31.5 cents per gallon, and that of premium gasoline to 33.5 cents per gallon. The retail price (adding 5 cents for both grades) thus became 36.5 cents per gallon for regular, and 38.5 cents for premium. These are the prices which Mr. Virteau stated prevailed in the Vancouver area between the date of decontrol and July 10th, 1951. (Evidence, August 1, 1951, Vol. 3, p. 294 and p. 297.)

The establishment of the 20 per cent retail markup on July 10th, 1951, through the A. R. A. brought the retail price per gallon to 37.8 cents for regular, and 40.2 cents for premium. (Evidence, August 1, 1951, Vol. 3, p. 295, also Exhibit H-7.)

The new 20 per cent retail markup not only became quickly and firmly established in the Vancouver area, but soon spread throughout the Province of British Columbia. In a letter written by Mr. Kinneard to W. T. Martin, of Martin Motors, Haney, British Columbia, dated August 27, 1951 (Exhibit No. 107), the following paragraphs appear:

"The new method of mark-up on gasoline has certainly put the retailer's margin on a more equitable basis, and this method of a percentage on cost, does protect the retailer's position against the wholesale price changes that occur from time to time.

It is surprising how smoothly this change over was brought about, and now almost every dealer throughout the province is receiving the 20% on cost outlined in the recommended price chart. Certainly this is an indication of what can be done if retailers will work together through their trade organization to deal with their mutual problems."

When questioned, on July 7th, 1952, about the last-quoted paragraph, Mr. Kinneard stated that it was an accurate statement, as far as he knew. Questioned at the same time as to the situation in the metropolitan Vancouver area, he said he believed the vast majority of the stations in that area were operating on the 20 per cent. He then said:

"There are some who are not, but there are very few. Actually it is a question of individual policy, whatever they determine to do themselves. Most service stations felt that was a sound policy, but there is always someone who thinks he has a better policy."

(Evidence, July 7, 1952,  
Vol. 8, p. 929)

On July 8, 1952, Mr. Virteau testified that he did not know of any service stations in the metropolitan Vancouver area that did not have the recognized price on their pumps. He qualified this statement by saying:

"There are a few that are higher, but there are none that are lower."

(Evidence, July 8, 1952,  
Vol. 8, pp. 951-2)

### Summary

In our opinion, the foregoing evidence definitely establishes that:

(1) Following the termination, on April 18, 1951, of gasoline price control by the Government of British Columbia, steps were taken with a view to safeguarding the retailer's existing price markup in the Vancouver area.

(2) For this purpose, it was decided to form a new organization of retailers carrying on business in the area.

(3) This new organization, for which the name of Automotive Retailers Association was soon adopted, was organized throughout the area by a series of fifteen district or zone meetings of gasoline retailers.

(4) From the first meeting onwards, it was apparent that the dealers desired not merely to maintain their existing retail markup, but to change the basis of computing the markup and to increase it.

(5) Out of these fifteen district meetings came a general agreement that, instead of the existing retail markup of 5 cents per gallon, they should operate on a markup of 20 per cent on cost (including the provincial gasoline tax).

(6) This general agreement was made effective on July 10th, 1951, and had become universally adopted in the Vancouver area by July 12th. By August 27th, 1951, the change had been adopted by almost all dealers in British Columbia.

(7) This change in the retail markup had the immediate effect that the price of regular grade gasoline to the consumer was increased from 36.5 cents per gallon to 37.8 cents per gallon, and that of premium gasoline was increased from 38.5 cents per gallon to 40.2 cents per gallon.

(8) The universal adoption of the agreement had the further immediate effect that all price competition in gasoline at the retail level was eliminated.

## CHAPTER V

### EXAMINATION OF ALLEGED PARTICIPATION OF THE VARIOUS PARTIES

#### 1. Participation of The Retail Merchants' Association of Canada

On behalf of the Retail Merchants' Association of Canada it was contended that this corporate body in no way participated in the bringing about or carrying out of the arrangements which led to the establishment of a common 20 per cent markup in the Greater Vancouver area. More particularly, it was advanced that, if anybody connected with the Retail Merchants' Association was instrumental in the formation or in the execution of such arrangements, Mr. J. L. Kinneard was the sole person to whom such acts might be imputed. It was then contended that Mr. Kinneard was acting for and on behalf of the Automotive Retailers Association, either unincorporated or incorporated, in the doing of such acts or the rendering of related services, and not for the Retail Merchants' Association. This proposition asserts that both the unincorporated and incorporated Automotive Retailers Association used Mr. Kinneard's services on loan from the Retail Merchants' Association of Canada, and that for this purpose he was completely divorced from the Retail Merchants' Association and employed solely by the Automotive Retailers Association and the Automotive Retailers Association, Incorporated. Consequently, it was argued that the two latter Associations alone could be held responsible for Mr. Kinneard's actions.

It was further very strongly urged that, at the hearings held in 1951 and 1952 before Combines Investigation Officer J. J. Quinlan, Mr. Kinneard was not authorized to speak in the name of or to bind the Retail Merchants' Association, although during all that time he was one of its trade secretaries. It was added that the only person who could have testified, with authority to bind the Retail Merchants' Association, was the Association's General Manager for British Columbia, Mr. George R. Matthews, whom the Combines Commissioner did not call as a witness in the course of his investigation. Mr. Matthews having since become very ill, and being unable to give evidence on behalf of the Retail Merchants' Association or of himself, it could not be said that "full opportunity to be heard in person or by counsel" had been given or could be given, as provided for by Section 18(2) of the Combines Investigation Act. It was therefore

submitted that no valid report could be made with respect to the said Association.

As far as the right for the Commission to report concerning the Retail Merchants' Association and Mr. George R. Matthews under these circumstances is concerned, this objection has been disposed of in our rulings on the preliminary objections to jurisdiction, which rulings are annexed to the present report as Appendix I. It will be noted that we there dismissed this objection and decided that the report should be proceeded with in respect of these parties.

As far as Mr. Kinneard's testimony is concerned, obviously this witness is competent to testify as to things which he did personally, either in his capacity as the trade secretary of the Automotive Division of the Retail Merchants' Association or in his capacity as secretary for the Automotive Retailers Association (unincorporated or incorporated). As a matter of fact, Counsel for the R. M. A. did not go so far as to contend that, if Mr. Matthews had himself given evidence, the facts testified to by Mr. Kinneard would have been denied. Rather, what was intimated to us was that Mr. Kinneard was not a competent witness to testify as to his own status in relation to the R. M. A., as to the continued nature of his employment for the R. M. A., either while he was engaged in the formation of the A. R. A. or while working for it, or for the A. R. A., Inc., after their formation, or, finally, as to the nature of the relations between the A. R. A. and the R. M. A., or between the A. R. A., Inc., and the R. M. A. during the whole period with which the investigation was concerned.

It is our opinion that, if Mr. Kinneard's testimony is relied upon exclusively, both as to the facts that he was personally aware of (on which facts there does not appear that there could be much contradiction) and as to the nature of the relations between the R. M. A. and himself, and also between the A. R. A. and the R. M. A. and between the A. R. A., Inc., and the R. M. A., during the said period, one cannot escape the conclusion that the Retail Merchants' Association of Canada participated in both the formation and carrying out of the arrangements or agreements under study in this inquiry. However, in view of the serious nature of the contention advanced by Counsel that Mr. George R. Matthews, as the managing head of the British Columbia Board of the R. M. A. and its principal executive officer during the period concerned, was the only one who could competently discuss the matter of the aforementioned relations from any point of view, the Commission would be reluctant to report on the matter without making sure that the conclusion so derived from Mr. Kinneard's evidence was corroborated by the whole of the record as constituted.

A careful scrutiny of all the evidence presented both before the Combines Commissioner and before the Restrictive Trade Practices Commission, including the very numerous exhibits filed at

the various stages of the proceedings, leads one irresistibly to the conclusion that the R. M. A. did participate to a material extent in the arrangements complained of. We are satisfied that (a) even if we were to exclude the verbal testimony given under oath by Mr. Kinneard, certain of the exhibits filed in the record and also the evidence given by witnesses like Collin Virteau clearly establish such participation; and (b) that the evidence given by an accountant of the R. M. A. and also the exhibits filed by her demonstrate that the acts and facts testified to by Mr. Kinneard may properly be imputed to the R. M. A.

(a) The Exhibits and Virteau's Evidence

Exhibit No. 2

Exhibit No. 2 consists in part of a two-page letter dated March 15, 1951, issued from the Pemberton Building, Vancouver, under the letterhead of The Retail Merchants' Association of Canada Inc., signed, "Legislative Committee, Joe Gordon, Thos. Hammond, A. Higgins, Nat. House, Collin Virteau". Page 3 of the exhibit is a document entitled, "Questionnaire", which is annexed to the said letter.

The letter refers to the activities of the said Legislative Committee, which, assisted by Mr. George R. Matthews, had interviewed members of the Government and Legislature of British Columbia in order to urge the Government to maintain provincial control of gasoline. The letter adds that, as there were no controls in any other province, and as the Government felt that no price war was likely to arise, decontrol would be effected. The letter dealt with certain other questions of importance to the trade, and, noting that "this has been a most expensive campaign", urged all to send in their contribution of \$10 - "All such contributors will be credited with six months' paid membership in the Retail Merchants' Association and it is of great importance to have a strong Association at this time, with the trade facing a very critical period". The following postscript appeared at the bottom of the letter:

"P. S. There is no other commodity which the public buys that requires the same service, that has such a low mark-up, as gasoline. Retailers generally add their percentage to the increased wholesale cost but not Service Stations.

Read carefully and if you agree, please sign and return the enclosed Questionnaire immediately."

The questionnaire itself should more properly have been entitled, "Undertaking". It was to be addressed and returned to the "Automotive Division, Retail Merchants' Association of Canada Inc. ,

Pemberton Building, Vancouver, B. C.", and consisted in essence of an agreement to maintain the then existing spread on gasoline and to increase it at a future date. The so-called "Questionnaire" was sent to service station operators in Greater Vancouver and throughout the province, whether members of the Automotive Division of the Retail Merchants' Association or not. It reads as follows:

"Because the spread on gasoline in British Columbia is the lowest in the Dominion of Canada, and because it does not permit of a very profitable operation, I/We agree to cooperate with our Fellow Service Station Operators throughout the Province in maintaining the present spread, AND FURTHER AGREE THAT AT THE FIRST INCREASE IN THE WHOLESALE TANK WAGON PRICE, WE WILL INCREASE OUR SPREAD BY ONE CENT PER GALLON.

---

Name of Station

---

Name of Operator

---

Address

---

Brand of gasoline handled)

Date: \_\_\_\_\_ "

Although consisting of service station operators, the Legislative Committee aforesaid was clearly a committee set up by and supported by the R. M. A. Mr. George R. Matthews, who acted with the said Committee, was the General Manager of the R. M. A. for British Columbia. The Automotive Division to which the questionnaire, or, rather, the undertaking, was to be returned was one of the trade sections of the Retail Merchants' Association of Canada.

Exhibits Nos. 3, 4 and 5

These are the minutes respectively of the annual meeting of the Automotive Division of the R. M. A., held at Vancouver on March 19, 1951, of a meeting of the Executive of the Automotive Division of the R. M. A., held on April 20, 1951, and of another meeting of the Executive of the Automotive Division held on May 11, 1951. Mr. George R. Matthews, of the R. M. A., was present at each of these three meetings.

At the first of these meetings, the question of the removal of price control was discussed, and it was noted that the Government had retained authority to deal with it. "Regarding the suggestion of increasing the retail margin on gasoline to 6¢, it was felt that desirable as this may be, it might be very difficult to establish and maintain the 6¢ spread." (Exhibit No. 3.)

At the meeting of April 20, 1951, Mr. Virteau, after having considered the matter himself and having also "discussed the situation with a number of other operators", made a recommendation for an increase in the gasoline margin to 6 cents per gallon. At this meeting -

"The advisability of the Association publishing in the press that gas would be increased 1¢ a gallon was considered and, in view of the fact that the Questionnaires received did not guarantee that such a raise would be approved by a sufficient number, Mr. Matthews stated that this was not the proper time to take such an action and that the Association would not therefore be prepared to make such an announcement in the press.

It was suggested that neighbourhood meetings of Service Station operators could be held with a view to getting their support on an increase in the margin on gasoline. Mr. Higgins was appointed as Chairman with power to select a committee which would be responsible for the arranging and holding of such neighbourhood meetings."

(Exhibit No. 4)

At the third meeting, that of May 11, 1951, a discussion took place with respect to the increase in spread. A report was made by Mr. Higgins concerning an informal district meeting which he had held in the Grand View area, where two suggestions, (1) of forming a new organization affiliated with the R. M. A., and (2) of an immediate increase in gasoline price spread had been approved. Following Mr. Higgins' report, a resolution moved by Mr. Higgins and seconded by Mr. Virteau was carried unanimously, providing for the organization of the city into districts, for the appointment of two delegates in each district "to negotiate with the present R. M. A. executive and office as to the affiliation and terms of such affiliation, and the services such affiliation requires; it to be clearly understood that affiliation with the R. M. A. is an essential part of such organization".

As appears from the minutes (Exhibit No. 5), it was Mr. George R. Matthews who had written to obtain data with respect to spreads on gasoline in the cities of Winnipeg and Toronto. These figures, as appears from the record, were quoted, referred to and discussed at nearly all of the subsequent district meetings which ultimately resulted in unanimity among retailers of gasoline in the Greater Vancouver area, and led to the final adoption of the present

20 per cent spread on July 10, 1951.

Exhibit No. 1

Exhibit No. 1 consists of four pages, being four one-page interrelated documents, as follows:

- (a) A letter dated Vancouver, June 7, 1951, addressed to "Service Station Operators throughout the Province", relating to "Increase in gas spread", and signed by George R. Matthews, as General Manager, British Columbia Board, under the letterhead of the Retail Merchants' Association of Canada Inc.
- (b) A schedule entitled, "Recommended Gasoline Retail Price Chart", listing what the retail prices would be if 20 per cent on cost were added to tank wagon cost including tax, on the basis of cost ranging from 31.0 to 41.0 cents.
- (c) A document entitled, "Questionnaire", drafted as follows:

"QUESTIONNAIRE"

(Please return)

Date \_\_\_\_\_

Automotive Division,  
Retail Merchants' Association,  
Pemberton Building,  
Vancouver, B. C.

Following is my opinion re increase in gas spread:-

Do you believe the present spread on gasoline is too low and are you in favor of increasing same?

YES      NO

Do you believe that the minimum retail price charged at all Service Stations should be determined by adding 20% to the tank wagon price, plus tax, as set out in the schedule?

YES      NO

Do you believe the increased spread should be made effective as soon as possible and will you establish a retail price based on the mark-up as suggested in the schedule, when advised by our office

YES      NO

I recognize that your organization must be adequately financed, and enclose \$10.00 for six months' Membership dues.

\_\_\_\_\_  
Name of Station

\_\_\_\_\_  
Signature of Operator

No. 287

\_\_\_\_\_  
Address

"

(d) Document also entitled, "Questionnaire", identical to the one recited above, with the exception that the last paragraph referring to the \$10.00 six months' membership dues has been omitted; this document apparently was sent instead of the preceding one to those of the operators whose dues were paid up.

The aforementioned letter appearing as page 1 of Exhibit No. 1 is self-explanatory, and is of such importance that it appears advisable to quote it at length:

"THE RETAIL MERCHANTS' ASSOCIATION  
OF CANADA INC.

Pemberton Building

Vancouver, B. C.

June 7th, 1951.

To Service Station Operators  
Throughout the Province

INCREASE  
IN  
GAS SPREAD

Dear Service Station Operator:

Meetings of Service Station Operators have been held in various districts in Vancouver, and it is the unanimous opinion that the present spread of 5¢ is inadequate.

It is agreed also that the retail price should be based on a percentage mark-up on cost including tax, just the same as applies to merchandising any other commodity and that the very minimum should be 20%.

When the matter of de-control was being considered by the Members of the Legislature, we did everything possible to retain control at retail level. Two Members of the Legislature operate Service Stations, and they were very honestly of the opinion that the removal of controls would be beneficial to Service Station Operators, as it would permit them to obtain a profitable spread. Now is our opportunity!

There have been references recently in the Press of the likelihood of an increase in the tank wagon price. Vancouver operators are of the opinion that they should increase their spread, however, just as soon as possible, and not wait indefinitely for an increase in the tank wagon price.

The Questionnaire we mailed to you on March 15th suggested increasing our spread at the same time the tank wagon price was increased to you, but in view of the opinion expressed by Vancouver Service Station Operators, we are now sending this Questionnaire to you to know what support we would receive to making the increased spread apply at the same time throughout the Province.

In order that you may know how this would affect you, enclosed please find a table which shows the amount of spread and retail price based on a 20% mark-up. Check it with your present spread and figure out exactly what this increase will mean to you on a year's gallonage.

If Service Station Operators throughout the Province are as determined and as enthusiastic as those in Vancouver, there is no doubt whatever that Service Station Operations can, and will, soon be put on a profitable basis.

The Service Stations in Vancouver that have not heretofore belonged to an organization, now see the need of same, and before they leave the meetings have each put up their Ten Dollars in good faith, as they recognize they must have an organization on the job to keep them informed and iron out difficulties that may arise from time to time.

In order to make an increase in spread workable, it must apply throughout the Province and cannot be confined to Vancouver. Please return your Questionnaire immediately. It is urgent, for if there should be an increase in the tank wagon price before our general plan of operation is made

effective, we would have to change such plan so that the increase in the spread would simultaneously take place at the same time as the increase in the tank wagon price.

Yours very truly,

Geo. R. Matthews

General Manager  
British Columbia Board

GRM/W  
No. 286"

It appears from the evidence that the documents forming Exhibit No. 1 were sent to all Service Station Operators throughout the Province of British Columbia, with the exception of those located within the Greater Vancouver area. It also appears that these documents were sent thirteen days before the date set for the last of the fifteen district meetings then being held successively in the Greater Vancouver area. It appears from the above documentary evidence that the Retail Merchants' Association of Canada, through its British Columbia Branch, was directly instrumental in the instigation and formation of agreements directed at establishing a common resale price through the adoption of a common retail markup on gasoline in the Greater Vancouver area. These documents clearly establish the following:

- (1) At or about the time of decontrol of gasoline by the provincial Government of British Columbia, the Automotive Division of the R. M. A. became interested in the establishment of a uniform spread;
- (2) On or about the 15th of March, 1951, a form of undertaking to this effect was distributed with the request that it be signed and returned to the Automotive Division of the R. M. A.;
- (3) It appears from Mr. George R. Matthews' letter of June 7, 1951, that the aforementioned undertaking (called a "questionnaire") was sent by or under the authority of the British Columbia Board of the Retail Merchants' Association of Canada Inc.;
- (4) Through the attendance at these three meetings of the Automotive Division, of the general manager of its British Columbia Board, Mr. George R. Matthews, the R. M. A. was made aware that the Automotive Retailers Association was being formed primarily for the purpose of obtaining an increased spread for retail gasoline dealers;
- (5) In the person of Mr. George R. Matthews, the British Columbia Board of the Retail Merchants' Association was made

aware of what transpired at the several district meetings held during the formation of the Automotive Retailers Association, concerning the establishing of a common increased retail markup of 20 per cent on cost of gasoline plus tax;

(6) Before all of the district meetings had been held, but at a time when it had become evident that the opinion among Greater Vancouver gasoline dealers was almost unanimous that a minimum uniform 20 per cent markup on cost should be established, Mr. George R. Matthews wrote to all service station operators outside the Greater Vancouver area to ascertain what support his Association would receive toward making the new increased markup applicable throughout the province, once it had been decided upon by the Greater Vancouver dealers;

(7) In this respect, Mr. George R. Matthews, writing as the General Manager of the British Columbia Board of the R.M.A., directly asked each of such British Columbia dealers if they would agree to establishing the new markup "when advised by our office";

(8) A schedule was prepared and circulated by the R.M.A. with a view to facilitating the calculation and application of the said 20 per cent spread;

(9) The operators concerned were urged to contribute \$10.00 for a six months' membership in the Automotive Division of the Retail Merchants' Association (it being, however, provided, as appears from the evidence, that, at a later date, membership would be transferred to the Automotive Retailers Association and credit given in the latter organization for any unexpired portion of membership).

#### Adoption of 20 Per Cent Spread on July 10, 1951

Then, too, evidence separate from that of Mr. Kinneard, viz., the evidence given by Mr. Collin Virteau, before hearing Officer J. J. Quinlan, on August 1, 1951, appearing at pages 299 to 312 of the transcript, together with two documents emanating from the Retail Merchants' Association and identified as Exhibits Nos. 40 and 44, also indicates the direct participation of the R.M.A., through Mr. George R. Matthews, in the activities directly leading to and immediately preceding the actual adoption of the common 20 per cent markup throughout the Vancouver area on the 10th of July, 1951.

On or about the 4th of July, 1951, when the peak of the holiday season and consequently of the probable sales of gasoline was at hand, and as a result of the several district meetings which they had attended, the station operators literally swamped Steering Committee members Syd. Morrey and Collin Virteau with telephone

calls, asking when the new markup would be put in force. Morrey and Virteau decided to consult with Mr. George R. Matthews on the subject and also to ask him whether it would be possible to prepare with little delay a chart similar to the one contained in Exhibit No. 1, but applying the 20 per cent markup to a wider range of basic costs including tax. In the course of one of these conversations with Mr. Virteau, the latter inquired about the possibility of the structure being set up for the 15th of July. Mr. George R. Matthews replied that the chart would be ready to be put in the mail on the 6th of July and that it might be advisable to see to it that the plan was put in force even earlier, namely, on the morning of the 10th of July, 1951.

Virteau then called personally by telephone each of the twenty-nine other zone delegates, and, upon receiving assurance that they respectively would call all the service station operators located in their districts, he telephoned Mr. Matthews, and it was decided that only the price chart would be sent to all of the operators of the province. The giving of directions to set up the new markup on the 10th of July was left to the thirty zone delegates, who were each to receive a memorandum reminding them to see to it that the operators in their respective districts complied with the agreement.

The new chart which was then prepared by the Retail Merchants' Association was filed as Exhibit No. 40. It is entitled, "Recommended Gasoline Retail Price Chart", and the following words are printed at the bottom in large letters: "EFFECTIVE THROUGHOUT BRITISH COLUMBIA JULY 10, 1951". The notice which Mr. Virteau says was prepared by or under the direction of Mr. George R. Matthews after discussion with him was filed as Exhibit No. 44. It reads as follows:

"NOTICE

to

ZONE DELEGATES

The printed Recommended Retail Price Charts will be mailed from the office, Friday, July 6th.

Will the Delegates please check to see that each Service Station in their Zone has received a card, and that same is made effective Tuesday Morning, July 10th."

Consequently, apart from the activities which took place at the inception of the arrangements and agreements studied here, the Retail Merchants' Association of Canada, through its British Columbia Branch General Manager, Mr. George R. Matthews, directly participated in and was privy to the activities which immediately preceded and assured the adoption of a common 20 per cent markup

in the Greater Vancouver area on the 10th of July, 1951. Particulars of these last activities may be summarized as follows:

(1) Mr. George R. Matthews discussed the final steps of the arrangements with Mr. Collin Virteau;

(2) Mr. George R. Matthews made a specific recommendation as to a date on which the new price margin should be made effective, which date was five days earlier than that originally proposed by the operators themselves;

(3) The British Columbia Board of the Retail Merchants' Association of Canada attended to the preparation of a chart to be used by all of the gasoline station operators throughout British Columbia, in applying the 20 per cent markup on basic costs of gasoline plus tax;

(4) The R.M.A. indicated in this price chart that it was to become effective throughout the province on July 10th, 1951.

(5) The British Columbia Board of the Retail Merchants' Association of Canada, through Mr. George R. Matthews, prepared for sending to the thirty Greater Vancouver Zone Delegates a notice informing them that the price chart would be mailed "from the office" and advising them "to see that each Service Station in their Zone has received a card, and that same is made effective Tuesday morning, July 10th".

(b) J. L. Kinneard's Actions Properly Imputable to  
the Retail Merchants' Association

The evidence goes much farther. It establishes that, at all times material to the present matter, Mr. J. L. Kinneard was in fact an employee of the R. M. A. and not of the A. R. A. or the A. R. A., Inc., at least prior to the beginning of 1953. Up to that time, Kinneard's activities in connection with the formation of the unincorporated Automotive Retailers Association, his activities with respect to the district meetings and the executive meetings of the said unincorporated Association, as well as his later work for the A. R. A., Inc., were performed in the name and on behalf of the Retail Merchants' Association. Kinneard was the instrument used by the Retail Merchants' Association, British Columbia Board, to perform the services which that Association was renting or selling to the A. R. A. On the 21st of March, 1953, at the hearing held before this Commission at Vancouver, the Retail Merchants' Association produced as a witness on its behalf Miss Ida Hart, who had then been the accountant in its Vancouver office for some four and a half years. Her testimony appears at pages 250 et seq. of the transcript of the said hearing.

Miss Hart first explained that, to her knowledge, Mr. Kinneard was in the employ and on the payroll of the Retail Merchants' Association between May, 1951, and the end of December, 1952. During all that period he was paid by the Association on a straight salary basis (with the exception of some extra compensation for work in the evening in May and June, 1951), said salary being increased from \$265 per month first to \$300 per month and later to \$350 per month, as appears from Exhibit H-21 filed by Miss Hart. During this period, the Retail Merchants' Association rendered continuous organizational and secretarial services to the Automotive Retailers Association, both unincorporated and incorporated. For these services, the Retail Merchants' Association billed the Automotive Retailers Association regularly, approximately on a monthly basis. This appears from Exhibit H-23, which is a bundle of twenty-nine documents, twenty of them being consecutive statements of account entitled, "Automotive Retailers Association, in account with Retail Merchants' Association". The group covers the whole period between May 7th, 1951, and December 31st, 1952. Each of these statements lists under the following headings the services rendered to the Automotive Retailers Association and the charges made therefor:

"J. L. Kinneard's time  
Office time  
Paid out  
Share of general overhead"

It appears that throughout the period concerned, Mr. J. L. Kinneard was never paid by the Automotive Retailers Association, but remained directly on the payroll of the Retail Merchants' Association. The Retail Merchants' Association, in turn, billed the Automotive Retailers Association at a fixed rate per hour for every hour during which Mr. J. L. Kinneard performed services for the said Automotive Retailers Association in the period covered by these statements of account. Under the heading of "J. L. Kinneard's time" also appeared the amount paid to him for car expense transportation during the period, for which reimbursement was sought. Under the item "Office time", appeared charges at a given rate per hour for each of the hours worked by the secretarial staff of the Retail Merchants' Association of Canada in the performance of such services as making up records, zone lists, etc. Underneath appeared amounts charged for preparing notices, addressing envelopes, etc. Lower on the sheet appeared monies paid out on behalf of the A. R. A. by the Retail Merchants' Association and also a statement with respect to A. R. A.'s "Share of general overhead".

Miss Hart filed as Exhibit H-22 a statement relating to the charges made to the Automotive Retailers Association for stenographic and bookkeeping services, etc., exclusive of Mr. Kinneard's services, for each of the monthly periods concerned. She stated, however, that no separate sets of amounts were entered in the books of the Retail Merchants' Association, to distinguish J. L. Kinneard's services from

other secretarial services (Evidence, March 31, 1953, Vol. II, p. 254):

"Q. In your ledger, I take it, these two sets of amounts are together?

A. Yes.

Q. And you have segregated them?

A. Yes."

It would consequently appear that the Retail Merchants' Association undertook to render, and in fact did render, full secretarial services to the A. R. A. and A. R. A., Inc., during the period concerned. These services were rendered by the Retail Merchants' Association of Canada (British Columbia Board) directly to the Automotive Retailers Association, and were not services performed by J. L. Kinneard as an employee of the Automotive Retailers Association (although, of course, Mr. Kinneard must be personally responsible for the things which he did under the aforesaid relationship if they were contrary to the law and against the public interest). This conclusion is made all the more certain by the fact that, there seems to have been no direct relation between the amounts charged to the A. R. A. and those paid by the Retail Merchants' Association to Mr. J. L. Kinneard for his services for any given period. As a matter of fact, for certain months, his regular monthly salary was higher than the amount charged to the A. R. A. by the R. M. A.; but, for other months, the R. M. A. received from the A. R. A. for Mr. Kinneard's services sums which were higher than the salary paid to him by the said R. M. A. This is illustrated by Exhibit H-21, reading as follows:

"Date	Paid to J. L. Kinneard	Charged to A. R. A.
1951		
May	\$265.00	May 7 - June 21 \$420.65
June	265.00	June 22 - July 21 94.50
July	265.00	July 22 - Aug. 21 195.00
Aug.	265.00	Aug. 22 - Sept. 19 235.50
Sept.	300.00	Sept. 20 - Sept. 30 105.00
Oct.	174.00 (Extra for evening meetings, May & June)	
	300.00	294.00
Nov.	300.00	333.00
Dec.	300.00	294.00
1952		
Jan.	300.00	306.00
Feb.	300.00	252.00
Mar.	300.00	438.00
Apr.	300.00	375.00

Date	Paid to J. L. Kinneard	Charged to A. R. A.
May	350.00	348.00
June	350.00	282.00
July	350.00	354.00
Aug.	350.00	350.00
Sept.	350.00	432.00
Oct.	350.00	450.00
Nov.	350.00	429.00
Dec.	350.00	450.00
	<u>\$6434.00</u>	<u>\$6437.65"</u>

It seems clear that this was not a case of periodical or temporary transfer of control or authority from the R. M. A. to the A. R. A. as far as Mr. Kinneard's services were concerned. Never, throughout the period, does it appear that the Automotive Retailers Association became the "patron momentané" or temporary employer of J. L. Kinneard; never did the existing relation of employer-employee between the Retail Merchants' Association and J. L. Kinneard cease in the course of the said period.

We appreciate that it is not the function of this Commission to pass on questions of legal rights or legal responsibility or to attempt any determination of the strict legal status of any of the parties. Our conclusion has been reached simply on the basis of fact. With this in mind, we believe that the following is a fair appraisal of the facts as revealed by the evidence concerning the relationships between Mr. J. L. Kinneard and the R. M. A., between Mr. Kinneard and either the A. R. A. or the A. R. A., Inc., as well as between the said Associations and the Retail Merchants' Association of Canada;

(1) The Retail Merchants' Association of Canada has had for a considerable number of years, and still has, a trade section known as "the Automotive Division of the R. M. A.,";

(2) Mr. J. L. Kinneard, at all times material to the investigation and inquiry presently under report, was the Secretary of the said Trade Section, and as such was continuously in the employ of the R. M. A.;

(3) As early as March and April, 1951, the Automotive Division of the R. M. A. had decided to take steps toward establishing an increased retail markup on gasoline including tax;

(4) With this in view, it was decided that the Automotive Division of the R. M. A. would join its efforts with those then being made by another group independent of the R. M. A. which had been formed within the Kerrisdale-Marpole area;

(5) For this purpose, it was decided by the two groups to form an association which allegedly would be independent of the R. M. A. , but would be affiliated with it for the purpose of obtaining its services;

(6) From that moment, the Retail Merchants' Association of Canada undertook to render, and did render, continuous comprehensive secretarial services to the unincorporated, and later to the incorporated, Automotive Retailers Association. For these services, the Automotive Retailers Association was billed directly at the end of each month by the Retail Merchants' Association of Canada:

(7) One of the persons whom the Retail Merchants' Association of Canada employed in the services which it had undertaken to render for the benefit of the Automotive Retailers Association was Mr. J. L. Kinneard;

(8) As part of the activities involved in the rendering of such services, Mr. Kinneard directly assisted in the holding of each of the fifteen district meetings of the Automotive Retailers Association and then of the Central Committee meeting, at all of which the questions of prices and common increased markup were discussed, and as a final result of which the arrangement was made to set up a general 20 per cent markup on the wholesale cost of gasoline including tax, in the Greater Vancouver area. This general agreement was duly carried out by substantially all the operators within the said area on the 10th of July, 1951;

(9) For the rendering of these services and for the performing of these activities, Mr. Kinneard was not paid by the Automotive Retailers Association, but was continuously remunerated by the Retail Merchants' Association of Canada, British Columbia Board, which remained his employer throughout;

(10) In this respect, it appears from Miss Hart's cross-examination by Mr. Hossie, Counsel for some of the other parties, that, during the said period between May, 1951, and December 31, 1952, the unemployment insurance contributions were paid in respect of Mr. Kinneard's employment, and the deductions from his salary for income tax purposes were made, by the said Retail Merchants' Association.

(11) Furthermore, irrespective of the matter of continuous payment of his remuneration by the Retail Merchants' Association, there is no indication in the evidence that, at any moment before the ultimate establishment of the common 20 per cent retail markup, J. L. Kinneard ever ceased to be under the authority and control of the said Retail Merchants' Association. At all events, at least until the first meeting of the Central Council of the unincorporated Automotive Retailers Association, on June 21, 1951, this new

Association could have had no actual authority or control over Mr. Kinneard because, up to that time it had no executive or administrative group of any kind. In fact, it seems clear that both before and after July 10, 1951, and up to the beginning of 1953, Kinneard remained the employee of the Retail Merchants' Association, under its authority and control.

### Summary

It is, therefore, our considered conclusion that the Retail Merchants' Association of Canada, through its British Columbia Board, and through the General Manager thereof, Mr. George R. Matthews, participated in and was privy to both the formation and the operation of the arrangements and agreements, either express or implied, disclosed in the present report.

#### 2. Participation of Mr. George R. Matthews

Nothing much need be added in the case of Mr. George R. Matthews, the General Manager of the Retail Merchants' Association during the whole period covered by the investigation and by the present report.

The activities of Mr. Matthews formed the major basis for our conclusion that the Retail Merchants' Association of Canada must be held to have participated in the arrangements and agreements under examination in this report. Obviously, Mr. Matthews must also be held personally responsible for his own actions.

#### 3. Participation of Automotive Retailers Association (unincorporated)

The purpose of the formation of the Association, which became known as the Automotive Retailers Association, in the Greater Vancouver area, was to achieve the very situation which brought about the inquiry in the present matter. The group of service station operators formed in the Kerrisdale-Marpole district around the beginning of April, 1951, and the members of the Automotive Division of the Retail Merchants' Association were brought together solely by the realization that they were pursuing a common purpose in their attempt to increase the margin on the retail price of gasoline, and by a common desire to merge their efforts so as to obtain more efficient results. The Automotive Retailers Association became the vehicle through which their common activities were carried out, and also became the clearing house for the exchange of information and opinion among the interested parties. In the result, an agreement was

finally reached, either express or tacit, which agreement was carried out on the 10th of July, 1951, by the setting up of a uniform 20 per cent markup on cost including tax.

True enough, during the period referred to in the foregoing paragraph, the Automotive Retailers Association had not yet been incorporated. However, we are not concerned here with legal proceedings as such and, irrespective of the question of corporate amenability at law, it is our function to ascertain and appraise the role played in the circumstances by the Association as a well defined group. In this respect the Association must be said to have participated in the formation and operation of the agreements and arrangements described in Chapter IV, and that those of its members and officers who were actively concerned in the carrying out of its purposes are, in our opinion, fully responsible for the activities concerned.

#### 4. The Incorporated Automotive Retailers Association

The evidence shows that the group originally formed as a mere association under the name of the "Automotive Retailers Association" was incorporated as a body politic under the British Columbia Societies Act, on March 1, 1952. Its Constitution and By-Laws were filed as Exhibit No. 76, and Section 2(a) thereof shows one of the objects of the Association to be:

"(a) To acquire and take over the present unincorporated Association known as the Automotive Retailers Association and to acquire and to take over any or all of the assets of the said Automotive Retailers Association and to assume all or any of the liabilities of the said Automotive Retailers Association and to adopt any agreements made by the said Automotive Retailers Association, and to carry such agreements into effect with or without modification."

The Statement of Evidence does not disclose actual participation of the Automotive Retailers Association, as a corporate body, in either the development, amendment, modification or further carrying out or enforcement of the arrangements and agreements brought into operation as a result of the activities of the Automotive Division of the Retail Merchants' Association and of the unincorporated Automotive Retailers Association. The principal reference in the Statement of Evidence to activities of the A. R. A., Inc., which might be of a questionable nature concerns the so-called "Wholesaler-Consumer Campaign", and, for the reasons already stated, we are not reporting on that matter.

It is true that one of the objects of the incorporated body

was, as above recited, "to adopt any agreements made by the . . . Automotive Retailers' Association, and to carry such agreements into effect with or without modification". But surely this, being a power granted by the public authorities, must be interpreted as being intended to cover the assumption and carrying out of legal and valid agreements only, and in no way the adoption of contracts or agreements which may be contrary to the criminal law.

Unless some specific activities to enforce or carry out the arrangements or agreements under inquiry have been engaged in by the incorporated Automotive Retailers Association, there would appear to us to be no reason for holding this corporate body responsible for the acts imputable to the other parties concerned herein. A corporation being distinct from its members, the illegal acts which may have been committed by the latter prior to the incorporation are not attributable to the corporate body unless it is shown that they have been adopted and continued by the corporation after it has come into existence. Some corporate participation must be shown.

We appreciate, however, that the new incorporated Association, as the agency for the promotion of the common interest of the service station operators, who, as members of the former Association, entered into agreements and arrangements we deem to be contrary to the public interest (as will be discussed in the following chapters), remains a dangerous instrument in the hands of those who entered into the said arrangements and agreements. We propose to deal with this aspect of the matter in the chapter on "Remedies".

#### 5. Participation of J. L. Kinneard

There is no need for much discussion or demonstration of our conclusion that J. L. Kinneard, both as Trade Secretary of the Automotive Division of the Retail Merchants' Association and as Secretary of the Automotive Retailers Association, participated in and was privy to the arrangements and agreements analyzed in the present report.

He was present at and participated from the beginning in all discussions which took place in relation to the necessity of maintaining and enforcing some control over the retail price of gasoline in British Columbia, and more particularly in the Greater Vancouver area; not only did he attend all the district meetings during and after the formation of the Automotive Retailers Association, but he himself attended to the sending of all notices therefor, as well as to the preparation of the agenda. At these meetings, he began the discussion by stating the problem and the interests to be protected, the procedure used in other provinces to establish a markup and the amount of said markup. He established contacts between the A. R. A. and the R. M. A. and with the group of operators which had been formed in the Kerrisdale-Marpole district.

Mr. Kinneard gave very frank and straightforward testimony before the hearing officer authorized by the Combines Commissioner. He did not attempt before this Commission, nor was any attempt made on his behalf, to deny his having participated in or been privy to the aforesaid arrangements or agreements. His defence rests on the general proposition and argument that the situation created by those arrangements and agreements, in British Columbia, and more particularly in the Greater Vancouver area, with respect to the distribution and sale of gasoline at retail, was not and is not contrary to the public interest, and that such a situation could not be avoided, as it was merely the consequence of the play of normal economic factors.

6. Edward Alexander Bence and Standard Oil Company of  
British Columbia Limited

During the period covered in the Statement of Evidence, Edward Alexander Bence was the Marketing Manager of the Standard Oil Company of British Columbia Limited. He and the Company are mentioned in paragraphs 6 and 10 of Part I of the Statement of Evidence among those "principally concerned in the misconduct described in this Statement". However, in view of the conclusion to which we have come, we deemed it proper not to deal with the circumstances concerning these two parties in the general recital of the facts in the chapter entitled, "The Facts as Disclosed by the Evidence". The evidence as it affects them is to be found in the testimony of Mr. Collin Virteau, at pages 320 to 329 of Vol. 3 of the transcript of the hearing before Combines Investigation Officer J. J. Quinlan, and in the evidence of Mr. Bence at pages 851 to 871 of Vol. 7 of the same transcript. It appears that, on the 9th of July, 1951, Mr. Virteau, with Messrs. Morrey and Green, called on Mr. Bence, at the latter's office. Their purpose was to discuss the question of the new markup and to find out what the attitude of the Standard Oil Company of British Columbia would be in respect thereto.

The discussion concerning the alleged participation of the Standard Oil Company of British Columbia Limited and of Mr. Bence, in the misconduct alleged in the Statement of Evidence, appears more particularly at pages 28 to 30, inclusive, of the Statement of Evidence, as follows:

"There are approximately 400 dealers in British Columbia selling Standard Oil Company of British Columbia products including gasoline. Some of these dealers operate stations leased from Standard Oil Company of British Columbia Limited and others are independent business men owning their own stations and selling Standard Oil products. In addition the company has six company-operated service stations, five in

the Vancouver area and one in the City of Victoria. These six stations are operated by employees of the company. The stations are designated by a red, white and blue colour design, while the lessees and independent dealers operate under a cream and green design, and are known as Chevron gas stations.

On July 9, 1951 Mr. Green, Mr. Morrey and Mr. Virteau called on Edward A. Bence, Marketing Manager of the Standard Oil Company of British Columbia Limited. Mr. Virteau outlined to Mr. Bence how the A. R. A. came to be organized and explained to him the stand they proposed to take with respect to the margin on gasoline. Mr. Bence was also advised that the Chevron dealers proposed to adopt the 20 per cent mark-up as well. Mr. Virteau then asked what the Standard Oil Company of British Columbia Limited proposed to do with respect to the price in their company-owned stations. According to the evidence of Mr. Bence (Evidence, [August 8, 1951], Vol. 7, p. 855) Mr. Bence stated first of all that he would not or could not discuss price-fixing or price setting of any kind. According to the evidence of Mr. Virteau, the following conversation took place between himself and Mr. Bence (Evidence, [August 1, 1951], Vol. 3, pp. 324-326):

'Q. Now will you proceed with your discussion?

A. I said, "If it is put this way - if a new retail price, or a new basis of computing your margin of profit on gasoline is put into effect in B.C.", I said, "how will your company feel about falling into line on your company-operated stations", and he said, "well, we have a lot of Chevron dealers to keep happy in this province, haven't we?"

Mr. Bence testified as follows with respect to this conversation:

'Q. Now do you recall that conversation?

A. Yes, something like that.

Q. And that would be a fair representation of what was said?

A. Yes.'

(Evidence, [August 8, 1951],  
Vol. 7 p. 864)

According to the evidence of Mr. Virteau the conversation continued as follows:

'A. And I said, "Yes, you have", and he said, "if it becomes a fact if a new policy of markup on gasoline is established, and we see the majority is affected throughout the province" - he said - "well, you know what happened in Victoria - we fell in line 48 hours after the change of policy. We felt that it was an established price, and we felt it was right to have our company fall in line with the price."'

Mr. Bence was also asked about that portion of the conversation:

'Q. Did that conversation take place?

A. What I said - that bit about Victoria, is correct - and what I said - that in the past, we had found it necessary to follow the markup - if there was a general advance - if we made a survey and found it had advanced, we would probably do what we had done in the past.

Q. And you referred particularly to what had happened in Victoria?

A. Yes, I did.'

(Evidence, [August 8, 1951], Vol. 7, p. 864)

According to Mr. Virteau the conversation continued as follows:

'A. And he said, "We are not saying we will or we will not, but if the Chevron dealers are going to be unhappy about it, I am not going to say any more."'

Mr. Bence was further asked about this portion of Mr. Virteau's evidence (Evidence, [August 8, 1951], Vol. 7, p. 865):

'Q. Did you say that?

A. Well, not quite that way, because it doesn't make sense.

Q. Well, that is what he said you said. Will you just comment on it now?

A. I indicated to him that we had to live with our customers and we would have to follow the markup or I thought we would.

- Q. When Mr. Virteau and Mr. Green and Mr. Morrey left your office, do you think they left there with the feeling that your company would fall in line if this price change took place generally throughout the province?
- A. Yes, I think they did. I think they left there with the feeling if the market price advanced, I would make a recommendation to follow the markup, although I didn't say that, but I think it would be a fair conclusion to draw, that I would make such a recommendation.
- Q. And you say you did make such a recommendation with regard to your Standard-owned stations and it was put into effect on the 12th or 13th of July?
- A. Yes, but I cannot remember the date. '

Mr. Bence also gave the following evidence (Evidence, [August 8, 1951], Vol. 7, p. 863):

- 'Q. Did you feel their purpose in coming to you was to request you, either directly or indirectly, to fall in line with the price change that was proposed?
- A. Yes, I think so.
- Q. That was your conclusion?
- A. Yes. What they wanted to know - the impression I got was that action was going to be taken and they were concerned with what would happen, I think, with some of our Chevron dealers and some of our company-operated stations. '

After the meeting with Mr. Green, Mr. Morrey and Mr. Virteau, Mr. Bence caused a survey of gasoline prices to be made throughout the Vancouver area that included both Chevron stations and oil stations leased or supplied by other oil companies. The result of that survey indicated that all service stations had adopted the 20 per cent margin with the exception of one Chevron dealer. As a result, Mr. Bence recommended to the President of the company that the prevailing price as shown by this survey be adopted at the company's stations, and this was done on July 12, 1951."

We have deemed it advisable to recite the full text of the Statement because the excerpts from the evidence therein referred to are the only ones which could possibly be thought to cast some doubt

on Mr. Bence's conduct and consequently on that of his Company.

After the most careful scrutiny, analysis and full discussion of all the evidence with respect to these two parties, we cannot but agree with the contention submitted by Mr. Guild, Counsel for both parties, that neither of them was a party or privy to the arrangements or agreements revealed. It might have been more appropriate for Mr. Bence to refuse altogether to discuss the matter with Mr. Virteau and his fellow station operators. It might have been preferable for him not to let these persons know what he thought his attitude would be should he become faced with a definite change in the market picture. Be that as it may, the essential thing is to ascertain the real nature and effect of his statements in the light of the circumstances in which they were uttered.

The first and foremost fact, in our opinion, is that, on the date when Virteau and his friends visited Mr. Bence at his office, the arrangements and agreements, with respect to the establishment of a new markup, and consequently of new increased uniform gasoline prices, had already been definitely entered into, and their carrying out in the Greater Vancouver area had been fully provided for. Up to that time neither Mr. Bence nor the Standard Oil Company of British Columbia had been approached by any of the other parties, concerning this matter.

Approximately five days before, i. e., about the 4th of July, 1951, Virteau and Morrey had definitely agreed that the new price structure would be enforced as soon as word could be passed to each of the dealers located in the fifteen districts. By the 5th of July, the date of the 10th had already been set, on Mr. George R. Matthews' suggestion, as the effective date. On the 6th, the green chart, filed as Exhibit No. 40, setting out the calculation of the retail price of gasoline under the new markup, and indicating the 10th of July as the effective date thereof, was already in the mail. By then, the notice, Exhibit No. 44 had also been sent, reminding each of the thirty District Representatives of the Greater Vancouver area that they were to see to it that the new prices were uniformly charged within their respective districts, on the said date of the 10th of July. So that, whatever Mr. Bence's attitude or decision might be, on the 9th there was nothing left to be done. The said agreement was already set to come into operation on the very next day.

As it was very aptly put by Counsel, Bence and his Company, on the occasion of this visit from the representatives of the A. R. A., were merely told of a situation, which had become a "fait accompli".

But, far from agreeing with the proposal, Mr. Bence told Virteau and his colleagues most emphatically that he could not and would not discuss markups or prices. He even seems to have been

surprised at the insistence of his visitors in pursuing the discussion further. At one time, he questioned the wisdom of the decision of which he had just been informed, referring to a case in Seattle where the dealers had increased their margin, and, in consequence, were faced with a price-war soon afterwards.

This conversation, according to Virteau (Evidence, August 1, 1951, Vol. 3, p. 326) was the only contact by representatives of the A. R. A. with officers of the Standard Oil Company Limited of British Columbia in relation to this matter.

Although he had been definitely informed that prices would be increased, Bence appears to have been very little aware of the decisiveness of the arrangement, because, after the departure of his visitors, he took no step to prepare for the event. On the 10th and 11th, when the new price structure had been almost universally established, Virteau states, at page 325 of the Evidence (August 1, 1951) that "every station operator in those areas phoned the Standard Oil and said 'What about your Station? It has not complied with the new price set-up?'". Under Bence's direction, a survey of gasoline prices through the Greater Vancouver area was then made by Standard Oil representatives, and, on the 12th of July, after it had been found that the market had unanimously moved to prices computed on the new 20 per cent markup, Bence, as Marketing Manager for his Company, recommended that prices in their Company-operated stations, be adjusted to those prevailing throughout the area. The attitude of the Standard Oil Company, through its Sales Manager, was not that of a party to an agreement, but that of a corporation which, being faced with a situation involving dangerous financial implications (viz., with respect to its many leased stations), felt that it could not do otherwise than adopt prices that, in a business sense, were practically forced upon it by a changed market.

No company, once the new markup had been almost universally adopted, could be expected to sacrifice its own business and financial welfare in order to leave some competition open to part of the public. It is obvious that the Company, depending for its existence on the patronage of some 400 dealers in the province, a great number of whom were located in the Vancouver area, could not be expected to leave its five Company-operated gasoline outlets as the sole competitors in the whole district, against its own dealers and distributors. True, it could have closed these outlets or leased them to others; but that might not have been a businesslike move, and, in any event, the Company was under no obligation, legal or otherwise, to do so.

Having reached the conclusion that Edward Alexander Bence and the Standard Oil Company of British Columbia Limited did not participate in the arrangements and agreements disclosed in the Statement of Evidence, we deem it in order to refer to two facts

arising out of the evidence:

(a) At no time was either the said Edward Alexander Bence or his Company a member of the A. R. A. ; nor did they in any way participate at any stage in any of the activities which led to either the formation or the development of the arrangements or agreements concerned;

(b) As would appear from Mr. Virteau's evidence (August 1, 1951, page 323), the Standard Oil Company of British Columbia seeks to interfere as little as possible in the free operation of their business by its lessees and distributors.

7. The Thirty-five Individual Gasoline Station Operators Mentioned

The Combines Commissioner, in paragraph 6 of Part I of his Statement of Evidence, named thirty-five individual service station operators as being among the parties "principally concerned in the misconduct described"; paragraph 7 added that these persons were "from time to time or at all times during the period covered by this Statement, members of the Central Council, which was and is the executive body of A. R. A. and of A. R. A. Inc., and own or operate retail gasoline outlets in the Vancouver area".

The evidence makes it clear that all of these persons, with the exception of Al. Higgins, Len Carver, Andy Johnson, George Cohen and Don Lewis, were members of the Central Council, as district Delegates, during the organization period of the unincorporated Automotive Retailers Association, and acted in that capacity at the time when the arrangements and agreements were actually put into effect on July 10, 1951. As such, they participated in and were privy to the activities which led to the formation of the A. R. A. , and they participated in the discussions relating to the adoption and observance of a common markup, leading to a common resale price. Further, each of them was active in passing on the word to the operators within their respective districts, so that they would comply with the arrangements agreed upon, and were thus directly instrumental in making the new price structure effective.

Len Carver, Andy Johnson, George Cohen and Don Lewis, mentioned above as exceptions, became members of the Central Council of the incorporated Automotive Retailers Association, but it does not appear that they held any such position before the actual incorporation, on the 1st of March, 1952. Consequently, since all the activities under examination in this inquiry took place in the year 1951, we are of the opinion that they have no direct responsibility for the establishment of the markup structure studied in this report.

It is true that Al. Higgins also does not appear to have been a member of the Central Council of the A. R. A. before the date of its incorporation. At an early stage, he was proposed as a Delegate, but refused, on the ground that he was negotiating in the name of the Automotive Division of the Retail Merchants' Association. However, he participated in most of the discussions from the beginning; he was throughout an active member of the Steering Committee; he attended many of the district meetings, where prices and markups were discussed; and undoubtedly played a direct part in the activities under examination here.

In our opinion, therefore, the following persons have been principally concerned in the alleged misconduct:

Collin Virteau,  
Thomas Donald Hammond,  
Douglas Dalzell Darling,  
William Christian (sometimes described as Leo) Mogensen,  
Albert Murray Martin,  
Joel Cutforth Gordon,  
Jack Gollner,  
William Leonard Grout,  
Cyril Victor Mark,  
Paul Raymond Faris,  
Richard Frederick Smith,  
Gordon Earl Parsons,  
Sidney James Morrey,  
Al. Higgins,  
Art Mendlin,  
Don Anderson,  
Art. Powell,  
Harvey Lowe,  
Frank Lee,  
Ed. Qualey,  
Hugh Smith,  
Milt. Read,  
Vern Rankin,  
Jack Reid,  
Frank Barry,  
Chuck Lew,  
Frank Quirk,  
Norm. Macey,  
Dick Kline,  
Dave McLennan and  
Maurice Marisco.

These are the names and surnames under which notices of the hearing before the Restrictive Trade Practices Commission were sent to each of the aforesaid parties. In preparing this report, in order to assure proper identification, we have checked each name

against that given to the reporter (in the case of those who testified before the Combines Investigation Officer) and also against the exhibits where the names or signatures of the parties appear. The only case where there might seem to be a discrepancy is the designation of Mr. Mogensen under the name of William Christian Mogensen, whereas, in the minutes of meetings bearing his name or his signature, he is referred to as Leo Mogensen. There is no doubt, however, in our mind that William Christian Mogensen who received the notice of hearing in the present matter and Leo Mogensen whose name appears as having been one of the delegates in East-Hastings District (Zore No. 1) is one and the same person. As appears from page 495 of the transcript of the evidence taken before Combines Investigation Officer J. J. Quinlan, William Christian Mogensen was sworn as a witness, on August 2, 1951. He was examined by Mr. Brown; he stated that, as recorded in the minutes filed as Exhibit No. 11, he took part in the meeting of East-Hastings District on May 21, 1951, was there and then elected the delegate for the said district to the Central Council of the Automotive Retailers Association, and that the other delegate appointed at the same time was Mr. Frank Lee (Evidence, pages 497 and 498). He was also referred to the minutes of a meeting of the said Central Council held on June 21 which minutes were filed as Exhibit No. 38 and show the attendance of a Mr. Leo Mogensen, and stated that he had in fact attended such meeting. We are satisfied with the identity of the person concerned.

## CHAPTER VI

### ARGUMENT CONCERNING NEED TO PROVE SPECIFIC PUBLIC DETRIMENT

The definition of a "combine" is found in Section 2(1) of the Combines Investigation Act, which reads as follows:

"(1) 'Combine' means a combination having relation to any commodity which may be the subject of trade or commerce, of two or more persons by way of actual or tacit contract, agreement or arrangement having or designed to have the effect of

- (a) limiting facilities for transporting, producing, manufacturing, supplying, storing or dealing, or
- (b) preventing, limiting or lessening manufacture or production, or
- (c) fixing a common price or a resale price, or a common rental, or a common cost of storage or transportation, or
- (d) enhancing the price, rental or cost of article, rental, storage or transportation, or
- (e) preventing or lessening competition in, or substantially controlling within any particular area or district or generally, production, manufacture, purchase, barter, sale, storage, transportation, insurance or supply, or
- (f) otherwise restraining or injuring trade or commerce;

or a merger, trust or monopoly, which combination, merger, trust or monopoly has operated or is likely to operate to the detriment or against the interest of the public, whether consumers, producers or others."

On the facts of this case, the important portion of the definition is found in Subsections (c), (d), (e) and (f), so that the Section, so far as material for the purpose of this inquiry, reads as follows:

"(1) 'Combine' means a combination having relation to any commodity which may be the subject of trade or commerce, of two or more persons by way of actual or tacit contract, agreement or arrangement having or designed to have the effect of

. . .

(c) fixing a common price or a resale price . . .

(d) enhancing the price, . . . or cost of article, . . .

(e) preventing or lessening competition in, or substantially controlling within any particular area or district or generally, . . . sale, . . . or supply, or

(f) otherwise restraining or injuring trade or commerce;

. . . which combination, . . . has operated or is likely to operate to the detriment or against the interest of the public, whether consumers, producers or others."

It was strongly urged before this Commission that no evidence had been presented during the inquiry which proved that the activities complained of had resulted in actual detriment to the public.

In examining this argument, the first point to be noted is that the law does not require proof of actual, existing public detriment to constitute an offence. Parliament, in describing the agreements or arrangements which are regarded as objectionable, included under its ban both agreements which have caused actual detriment to the public and agreements "likely to" produce the same result. To us, therefore, it seems quite evident that, in the mind of the legislature, some agreements may be held, by their very nature, to be against the public interest, even without specific proof of present detriment. If an agreement is such that its operation in an industry is likely to result or will probably result in some injury, loss or detriment to the public, it also comes within the purview of the statutory ban.

Now, what was the situation here? What was the effect, actual or probable, upon the public interest, of the agreements and arrangements under review in this report?

We have already noted the advisability of this Commission refraining as far as possible from entering into technical discussions of the meaning and effect of either the statute law or its judicial interpretation, as applying to particular situations brought before us for review. The niceties of the law, the distinctions which may be found in judicial opinions, their explanation and application, belong to the properly constituted courts, to be considered in the course of

proceedings before them. Nevertheless, Canadian legislation relating to combines and restrictive trade practices, and the jurisprudence thereon arising from judicial decisions, are so closely integrated and interwoven into the general pattern of our country's economy that it is neither possible nor desirable to avoid all reference thereto when examining the effect upon the public interest of a particular restrictive agreement or practice. This is especially so when our attention is directed to a restrictive agreement or practice in its relation to the fundamental purpose of the law.

Now, the legislation with which we are concerned is unquestionably intended to safeguard basic principles of our economic and social life. It is also not subject to doubt that, after making due allowance for exceptions which are known to exist, our economic system is essentially one of free enterprise. The central feature of a free economy, the necessary element which alone makes it a workable functioning economy, is competition. And so the courts have repeatedly said that the fundamental principle at the basis of all our legislation on this subject is "the protection of the public interest in free competition". The courts have held further, and consistently, that an agreement having for its direct object the adoption of a uniform price for a given commodity in any substantial sector of the market is, by its very nature, an agreement which is detrimental or is likely to be detrimental to the public -- because it eliminates free competition in the matter of price. When such an agreement becomes operative, price competition ceases, and the public is deprived of the benefit to which it is entitled from the normal play of competitive factors in the determination of prices.

By definition, the concept of a free economy is opposed to one in which prices are regulated or controlled, though exceptions to complete freedom of competition in respect of prices do exist. Where exceptions exist, they are justified on the ground that special circumstances or conditions require some degree of control, in the interest of the public. Since, in such cases, the control is exercised by reason of a special need to protect and safeguard the public interest, it follows that such control as is required by those circumstances should be vested in some public authority whose sole function and duty is to act on behalf of the public, e.g., Parliament, the Government, or a public body appointed by and responsible to the representatives of the people. In no case should the regulation and control of prices rest in the hands of those who have a direct financial interest in the profits to be made from sales of the commodity.

Control of prices by a public authority under special circumstances is a far cry from control by private interests and individuals. Controls by private interests are almost certain to be exercised on their own behalf, not on that of the public, with the inevitable consequence of detriment or injury to the public. Price-fixing agreements among dealers and distributors of a given

commodity are, by their very nature, examples of private control of prices, and, as such, should normally be held contrary to the public interest. As a matter of fact, as control even by a public authority is so much a departure from fundamental principles that it should be resorted to only in exceptional cases, private control is all the more repugnant to the whole body of our accepted economic and social standards. The case for condemnation in principle of a price-fixing agreement becomes particularly strong in circumstances like those present here, where, in the matter of the sale and distribution of gasoline at the retail level in the Greater Vancouver area, such unanimity of action was attained by agreement among the dealers as virtually to exclude all possibility of price competition, and, consequently, of free bargaining, between distributors and buyers.

In a free economy, goods and prices must meet the test of the market place, where in the opinion of both economists and jurists, free competition is at once an automatic and at the same time the best and safest regulator of prices. Where the economy is dynamic, methods and costs of production and distribution alike are not static, nor are the tastes and requirements of the public. So many variable factors enter into the price structure that no final standards can be applied with certainty to determine what is a fair price for a commodity. Even if we suppose that a price has been found to be fair today, changing conditions may well make that price unfair (either too high or too low) tomorrow. Thus, under ordinary market conditions, if all the factors which normally operate between buyers and sellers in a system of free competition are left to play their respective parts in the shaping of the general pattern of prices, it is most likely that the result will be fair to both distributor and consumer.

The arrangements agreed upon and made effective with respect to the distribution and sale of gasoline in the Greater Vancouver area surely left no room for the normal interplay of such factors. Not only did the agreement preclude price competition within the area, but the area was sufficiently large to render impossible, for all practical purposes, any effective competition from outside the area. That unanimity of application was speedily attained appears clearly, inter alia, from the evidence of Collin Virteau, who said that, on the day following July 10th, 1951, the date agreed upon, all but one of the more than 500 dealers in the area had fallen in line. As a matter of fact, it appears from the evidence that, shortly after the 10th of July, 1951, the new markup, with its consequent increase in the price of gasoline, was adopted almost unanimously by dealers throughout the Province of British Columbia. Consequently, for the people in the area, there was no option left, if they required gasoline, but to buy it at a uniform price corresponding to the whole-sale cost including tax, plus a markup uniformly applied of 20 per cent.

Not only did the arrangements and agreements we are examining destroy price competition among dealers, and deprive consumers of their right to seek to obtain gasoline at more convenient prices, better suited to their individual circumstances, not only did consumers thereby become subjected to price control and regulation at the hands of private interests, but also their unanimous adoption removed from the dealers' minds any fear of losing business through price competition. They, therefore, dared to do, on the 10th of July, what the evidence indicates they probably would not have been willing to chance before the agreement, viz., increase the price of gasoline. Overnight the retail price of gasoline to the consumer was increased by 1.3 cents per gallon for "regular" gasoline, and by 1.7 cents for "premium" gasoline.

Further, the arbitrary nature of the agreement and its unanimous adoption precluded the operation of any economic factors to prove whether the higher price of gasoline was justifiable or not. The danger to the public interest, where prices are arbitrarily raised by agreement among the dealers, is particularly strong in a domain where substitutes cannot be found. In such a case, once an increase has been successfully and universally applied, the public has very little protection against further arbitrary and perhaps completely unjustifiable increases in the future. Exempla trahunt. If a 20 per cent markup may be established by agreement, what is to prevent another agreement establishing a 25 per cent markup or a 30 per cent markup, or more? Only the possibility that some dealers might not maintain a higher markup stands in the way.

On principle, therefore, in the circumstances of this case, there is no doubt in our minds that the agreement to establish a new uniform markup of 20 per cent on the wholesale price of gasoline including tax was, by its very nature, likely to act to the detriment of the public. We are also satisfied that it did in fact act against the interest of the public, viz., the consumers of gasoline, as will be shown in a subsequent chapter.

The concept that price-fixing by agreement is inherently reprehensible seems to be agreed to even by the experts brought on behalf of the parties as their two principal witnesses. These witnesses were Dr. Purdy and Professor Vukelich, whose evidence will be examined in the next two chapters. Both of these witnesses testified that the establishment of the 20 per cent markup in July, 1951, might have been expected as the consequence of normal economic factors. Each of them was cross-examined by Mr. Brown, acting on behalf of the Commissioner, as to the soundness of arriving at and applying a common price by agreement. When referred to an earlier part of his testimony before this Commission concerning "natural forces" in the laws of economics, Dr. Purdy admitted that "an agreement by operators to fix the price" would not be considered such a natural force. (Evidence, March 27, 1953, Vol. I, p. 158.) At

page 188, Professor Vukelich was examined as to his opinion concerning price-fixing by agreement, and, to the following question: "Do you approve of price-fixing, Professor?", he answered as follows: "No, Sir, in principle I don't." The following question and answer, on cross-examination of Professor Vukelich by Mr. Norris, Counsel for Mr. Matthews and for the Retail Merchants' Association of Canada, appear at page 207 of the transcript of the proceedings before this Commission:

"Q. Dr. Vukelich, I refer to the fact that my learned friend has stated, price-fixing, I think it was, or price combination, was not a normal operation of economic factors, and you agreed with it.

A. Price-fixing by agreement, yes."

(Evidence, March 31, 1953, Vol. II)

## CHAPTER VII

### EVIDENCE OF EXPERTS SEEKING TO ESTABLISH THAT ADOPTION OF THE NEW MARKUP IN JULY, 1951, CAUSED NO DETRIMENT AND WAS TO BE EXPECTED AS A NATURAL DEVELOPMENT

As an alternative to the contention that no case had been made before this Commission in support of the allegations of the Commissioner, in the absence of proof of specific detriment to the public, it was affirmatively submitted that, in fact, no detriment was occasioned by the adoption of the 20 per cent markup and that, on the contrary, the adoption of a percentage markup was necessarily to be expected following decontrol by provincial authorities, and that the actual markup of 20 per cent was in no way excessive and was even surprisingly low.

This contention was based entirely on the evidence of the two expert witnesses, Dr. Henry Wesley Purdy and Professor Lawrence M. Vukelich. Dr. Purdy's evidence in chief is to be found on pages 120 to 148, inclusive, and his cross-examination on pages 149 to 163, inclusive, of the transcript of the proceedings before this Commission. Professor Vukelich's direct evidence is reported on pages 169 to 186, and his cross-examination and re-examination on pages 186 to 230, inclusive.

Dr. Purdy holds the degree of doctor of philosophy from the University of Chicago; he stated that he had "studied extensively in economics and graduated from the University of British Columbia, having majored in economics"; he also holds a master's certificate from the business school of the University of Washington, in Seattle. He had some teaching experience, was for some time an "Assistant Research Director for the Missouri Railroad", and, since 1947, he has been in the employ of the British Columbia Electric Railway Co., Ltd., in the capacity of "Research Director".

Professor Vukelich holds a bachelor's degree in economics in business. He majored in industrial management at the University of Washington, Seattle. He also holds a master's degree in business administration from the same university, and is now an assistant professor and head of the Division of Marketing in the School of Commerce, University of British Columbia. He had some practical experience in the retail field, having been a division manager for three

years with Sears-Roebuck in Northern Minnesota, and having also been an assistant manager of a departmental store in Seattle for some time.

Dr. Purdy's Submission

The main contention of Dr. Purdy before this Commission was that the coming into force of the general 20 per cent markup on gasoline in the Vancouver area on or about July 10, 1951, was a normal phenomenon brought about quite naturally by a series of economic factors. His explanation of these factors and of their influence in the circumstances may be stated in substance as follows:

(1) In practice, considerable, although by no means complete, uniformity in prices is found in the distribution and sale of gasoline. This, in the opinion of the witness, is due to three things:

- (a) a tendency for prices in a competitive industry to adjust themselves at the same level;
- (b) the small margin the retailer has to play with in the case of gasoline, and the consequent economic danger that would result to him from price-cutting;
- (c) the fact that, in gasoline retailing, stock inventory is not a big item of expense, as is the case in other businesses, such as the furniture business, where periodical clearance sales become necessary to dispose of slow-moving stock - there is no such occasion for price fluctuations or non-uniform prices in the gasoline business.

(2) After decontrol, when a margin measured in cents per gallon was no longer compulsory, the unanimous adoption of a percentage basis was to be expected. This, the witness stated, has become the accepted pricing method in this part of the continent.

(3) The percentage markup when adopted had to be at least in the amount of 20 per cent, in view of the considerable increase in all prices since 1947 and because the price of gasoline had in the meantime remained relatively stable. On this point the witness made some comparisons between the increase in profits in other types of business during the control period and down to the date of the investigation, and the trend in retail gasoline profits, coming to the conclusion that in the latter case profits have always been much lower proportionately. The witness contended that, not only did gasoline prices not increase in accordance with the general trend, but, during that time, the operators of gasoline stations incurred greatly increased expenses in line with such trend.

### Exhibits

In support of this contention, Dr. Purdy filed Exhibits H-4, H-5, H-6 and H-7, which may be described as follows:

Exhibit H-4 is a booklet entitled "Expenses in Service Stations", issued by the National Cash Register Company, Dayton, Ohio (Merchants' Service). We were referred mainly to pages 4 and 5 thereof (which consist of a chart or table derived from Dun & Bradstreet, Inc., and entitled "Operating Ratios Service Stations"). This table, which is annexed to this report as Appendix II, and which purports to be based on returns made by 1,131 service stations, divided into 15 categories (grouped according to population and yearly gross sales), is intended, as stated on page 3 thereof, to enable the gasoline station operator to "figure out in dollars and cents as nearly as possible the answers to these questions:

1. What sales should I reasonably expect from my business?
2. What gross profit can I reasonably expect on this volume of business?
3. What expenses (including my own salary) will be necessary?
4. Will net profit on the basis of the above estimates be adequate?"

The table proceeds thus: By subtracting the percentage cost of goods sold from 100 per cent (total sales), the average gross percentage margin for each category is arrived at. The net percentage profit for each category is then found by subtracting the total percentage expense from the gross percentage margin. For instance, the table shows that, in the case of the returns made by fifty-eight concerns operating in an area where the population is 100,000 or over and whose gross sales ranged between \$20,000 and \$30,000, "cost of goods sold" accounts for 76.2 per cent, leaving a gross margin of 23.8 per cent; subtracting total expense of 21.1 per cent from gross margin, a net profit of 2.7 per cent on gross sales appears to be left to the operator. A compilation of the gross margin for all categories gives an average of 24.86 per cent.

Exhibit H-5 is another booklet, entitled "Expenses in Retail Businesses", also issued by the National Cash Register Company, Dayton, Ohio (Merchants' Service), wherein we were referred by the witness to pages 32 and 33, which consist of a reproduction of the same table as that found in Exhibit H-4 at pages 4 and 5.

Exhibit H-6, also filed by Dr. Purdy, was compiled and prepared by the other witness, Professor Vukelich. It consists of four pages, reproduced hereunder, for purposes of discussion:

"WHOLESALE AND RETAIL GASOLINE PRICES OF  
GASOLINE ON THE PACIFIC COAST"

February 28, 1953

PREMIUM GASOLINE

	<u>Wagon Price</u> ¢	<u>Tax</u> ¢	<u>Total Cost</u> ¢		<u>Retail Price</u> ¢		<u>Gross Profit</u> ¢	
San Diego, Cal.	19.0	6.0	25.0	to	30.5 32.2	to	5.5 7.2	to 18.0% 22.3%
San Francisco, Cal.	18.6	6.0	24.6	to	30.4 31.7	to	5.8 7.1	to 19.8% 23.0%
Portland, Oregon	19.1	7.5	26.6	to	32.1 33.5	to	5.5 6.9	to 17.1% 20.6%
Seattle, Wash.	18.6	8.5	27.1		32.6		5.5	16.9%

REGULAR GASOLINE

	<u>Wagon Price</u> ¢	<u>Tax</u> ¢	<u>Total Cost</u> ¢		<u>Retail Price</u> ¢		<u>Gross Profit</u> ¢	
San Diego, Cal.	17.0	6.0	23.0	to	28.5 28.9	to	5.5 5.9	to 19.3% 19.2%
San Francisco, Cal.	16.6	6.0	22.6	to	27.9 28.7	to	5.3 6.1	to 19.0% 21.2%
Portland, Oregon	17.1	7.5	24.6	to	29.6 31.8	to	5.0 7.2	to 16.8% 22.6%
Seattle, Wash.	16.6	8.5	25.1		30.1		5.0	16.6%

WHOLESALE AND RETAIL GASOLINE PRICES  
ACROSS CANADA

February 1, 1951

PREMIUM

	<u>Wagon Price</u> ¢	<u>Tax</u> ¢	<u>Total Cost</u> ¢	<u>Retail Price</u> ¢	<u>Gross Profit</u> ¢	
Montreal, Que.	24.60	13	37.60	44.00	6.40	14.5%
Toronto, Ont.	24.30	11	35.30	41.80	6.50	15.5%
Winnipeg, Man.	27.70	9	36.70	42.60	5.90	13.9%
Regina, Sask.	24.20	10	34.20	40.30	6.10	15.2%
Calgary, Alta.	23.30	9	32.30	39.00	6.70	17.2%
Vancouver, B. C.	<u>23.20</u>	<u>10</u>	<u>33.20</u>	<u>38.20</u>	<u>5.00</u>	<u>13.2%</u>
Average	24.55	10	34.88	40.98	6.10	14.9%
	=====	==	=====	=====	=====	=====

REGULAR

	¢	¢	¢	¢	¢	
Montreal, Que.	22.60	13	35.60	42.00	6.40	15.2%
Toronto, Ont.	22.30	11	33.30	39.80	6.50	16.2%
Winnipeg, Man.	25.70	9	34.70	40.60	5.90	14.4%
Regina, Sask.	22.20	10	32.20	38.30	6.10	16.0%
Calgary, Alta.	21.30	9	30.30	37.00	6.70	18.1%
Vancouver, B. C.	<u>21.20</u>	<u>10</u>	<u>31.20</u>	<u>36.20</u>	<u>5.00</u>	<u>13.9%</u>
Average	22.55	10	32.88	38.98	6.10	15.6%
	=====	==	=====	=====	=====	=====

VANCOUVER SERVICE STATION

SAMPLE STATEMENT OF PROFIT AND LOSS

GASOLINE SALES 50% OF \$100,000 TOTAL VOLUME

February 28, 1953

	<u>Sales</u>	<u>Cost of Sales</u>	<u>Gross Profit</u>
	\$	\$	\$ %
Gasoline	50,000	41,610	8,390 16.77%
Oil	4,000	2,270	1,730 43.33%
Parts & Accessories	26,000	19,500	6,500 25.00%
Labour	20,000	13,000	7,000 35.00%
	<hr/>	<hr/>	<hr/>
GROSS	100,000	76,380	23,620 23.62%
Operating Expenses			<u>16,500</u> <u>16.50%</u>
Net Profit, including Proprietor's Wages			<u>7,120</u> <u>7.12%</u>

VANCOUVER SERVICE STATION

SAMPLE STATEMENT OF PROFIT AND LOSS

GASOLINE SALES 75% OF \$100,000 TOTAL VOLUME

February 28, 1953

	<u>Sales</u>	<u>Cost of Sales</u>	<u>Gross Profit</u>	
	\$	\$	\$	%
Gasoline	75,000	62,420	12,580	16.77%
Oil	6,000	3,400	2,600	43.33%
Parts & Accessories	15,000	11,250	3,750	25.00%
Labour	4,000	2,600	1,400	35.00%
	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>
GROSS	100,000	79,670	20,330	20.33%
Operating Expenses			<u>16,500</u>	<u>16.50%</u>
Net Profit, including Proprietor's Wages			3,830	3.83%
			<u>          </u>	<u>          </u>

Exhibit H-7 consists of four typewritten pages and is reproduced hereunder. It was filed by Dr. Purdy and is entitled:

GASOLINE PRICE and RENTAL SURVEY

Compiled by

Professor Lawrence M. Vukelich

# "WHOLESALE AND RETAIL GASOLINE PRICES OF GASOLINE

	<u>Wholesale Price</u>		<u>Retail Price</u>		<u>%</u>		<u>Gross Profit on Cost</u>		<u>Margin</u>
	<u>Regular Premium</u>		<u>Regular Premium</u>		<u>Regular Premium</u>		<u>Regular Premium</u>		
VANCOUVER:									
April, 1951	31.5	33.5	36.5	38.5	15.9	14.9	.05	.05	.05
July, 1951	31.5	33.5	37.8	40.2	20.0	20.0	.063	.067	.067
Aug., 1951	32.0	34.0	38.4	40.8	20.0	20.0	.064	.068	.068
April, 1952	31.8	33.8	38.1	40.5	19.8	19.8	.063	.067	.067
VANCOUVER:									
March, 1953	33.5	35.5	40.2	42.7	20.0	20.2	.067	.072	.072
ONTARIO:									
March, 1953	32.4	34.4	39.5	42.0	22.0	22.0	.071	.076	.076
QUEBEC:									
March, 1953	34.7	36.7	42.0	44.5	21.0	21.0	.073	.078	.078
ALBERTA:									
Edmonton, March, 1953	29.5	31.5	36.0	38.0	22.0	20.6	.065	.065	.065
Calgary, March, 1953	31.0	33.0	38.0	40.0	22.6	21.2	.07	.07	.07

# Wholesale and Retail Gasoline Prices of Gasoline, Continued

	Wholesale Price		Retail Price		%	Gross Profit on Cost		Margin
	Regular	Premium	Regular	Premium		Regular	Premium	
MANITOBA:								
Winnipeg, March, 1953	31.1	33.1	37.3	39.7	20.0	20.0	.062	.066
SACKATCHEWAN:								
Regina, March, 1953	30.8	32.8	37.1	39.1	20.4	19.2	.063	.063
San Diego, Cal.	23.0	25.0	to 28.5 28.9	to 30.5 32.2	23.9 to 25.7	22.0 to 28.8	5.5 to 5.9	5.5 to 7.2
San Francisco, Cal.	22.6	24.6	to 27.9 28.7	to 30.4 31.7	23.5 to 27.0	23.6 to 28.9	5.3 to 6.1	5.8 to 7.1
Portland, Oregon	24.6	26.6	to 29.6 31.8	to 32.1 33.5	20.3 to 29.3	20.7 to 25.9	5.0 to 7.2	5.5 to 6.9
Seattle, Wash.	25.1	27.1	30.1	32.6	19.9	20.3	5.0	5.5

# R E N T A L S

<u>Company</u>	<u>Station Location</u>	<u>1950</u>	<u>1951</u>	<u>1952</u>	<u>1953</u>
B. A. Shell	10th & Discovery 1995 Cornwall	\$75.00 1 1/2¢ per gal.	\$75.00 1 1/2¢ per gal.	\$75.00 1 1/2¢ per gal. till Oct.	\$125.00 150.00
Shell	1604 W. Georgia	1 1/2¢ per gal.	1 1/2¢ per gal.	1 1/2¢ per gal.	1 1/2¢ per gal.
B. A.	1895 E. Hastings	80.00	120.00	120.00	150.00
B. A.	655 Burrard	209.94	281.31	342.63	364.97
Imperial	41st & Yew	75.00	100.00	125.00	150.00
Imperial	15th & Kingsway	103.00	118.45	130.22	185.00
Imperial	43rd & Fraser	-----	-----	103.77	150.00
Standard	4906 McKenzie	Operator Own property			
Standard	198 Alexander	135.00 per month plus 1¢ per gal.			
Home	5702 Granville	450.00 per month less 1¢ per gal.			
Shell	63rd & Granville	300.00	300.00	425.00	425.00
Texaco	Charles & Nanaimo	130.00	145.00	170.00	170.00
Imperial	Garden & Hastings	95.00	95.00	127.00	127.00
Imperial	1st & Burrard	45.00	54.00	75.00	100.00
Imperial	10th & Blanca	75.00	105.00	105.00	135.00
Imperial	25th & Cambie	115.00	133.00	200.00	230.00
Imperial	49th & Main	167.00	275.00	375.00	400.00
Imperial	37th & West Blvd.	115.00	146.00	192.31	235.00
B. A.	690 Beatty	50.00+1¢ per g	50.00+1¢ gal	125.00+1¢ per g	125.00+1¢ per g.
			125.00+1¢ gal		

GASOLINE PRICES IN VANCOUVER AREA AS ESTABLISHED BY  
REGULATIONS OF THE COAL AND PETROLEUM CONTROL BOARD  
AS REPORTED BY BUREAU OF ECONOMICS AND STATISTICS OF DEPARTMENT OF TRADE AND COMMERCE

	Wholesale Price		Retail Price	
	<u>Regular</u>	<u>Premium</u>	<u>Regular</u>	<u>Premium</u>
VANCOUVER: Regulation 7				
6th October, 1949	31	33	35 1/2	37 1/2
8th June, 1950	32	34	37	39
26th October, 1950	31.2	33.2	36.2	38.2 "
Regulation 12				

Professor Vukelich's Submission

Professor Vukelich's submission to our Commission may be summarized as follows:

(1) The fact that, previous to decontrol, a margin expressed in cents per gallon had been used to determine profits on gasoline in the Vancouver area, rather than a per cent markup, should be considered unusual. According to the witness, "When we say retailing, we are concerned more with percentages than price." (Evidence, March 31, 1953, Vol. II, p. 171 and p. 177.)

(2) As compared with what has been done by gasoline station operators in other areas, the 20 per cent markup adopted by the Vancouver retailers was completely reasonable because:

- (a) the markup on gasoline is considerably lower than the markup in general retail trade;
- (b) in the Vancouver area, the present markup on gasoline (20 per cent) is lower than the markup for the same product in the United States;
- (c) the present markup in Vancouver is the same, or somewhat lower, than in other provinces, and page 1 of Exhibit H-7 makes this fact clear.

(3) If compared with the general increases that have occurred in wages, rentals and other costs, the actual increase in the price of gasoline, brought about as a result of the application of the new markup, in July, 1951, was normal, and it even seems surprising that the increase was not greater. The witness said it was evident that, due to the increased expenses and obligations with which the gasoline dealer was faced, a larger margin had become necessary.

(4) According to the witness, a further matter, that of "shrinkage", should be considered in the appraisal of profits. (Evidence, March 31, 1953, Vol. II, p. 184.) Professor Vukelich stated that this question was dealt with in the report made on October 21, 1936, by Mr. Justice M. A. Macdonald, who had been appointed a Royal Commissioner to investigate and report on the Petroleum Industry in the Province of British Columbia. The witness said that, at the time of the report, shrinkage was found to exist in varying proportions up to 6 per cent.

Exhibits

In support of his contention, Professor Vukelich filed the

following exhibits in addition to H-6 and H-7, which had been prepared by him but filed by Dr. Purdy:

- H-8 - A booklet issued by the National Cash Register Company, Dayton, Ohio (Merchants' Service), entitled "Controlling Merchandise and Expenses", relating to merchandise control, control information, figuring of inventories and of operating plans, expense control and adjusting, etc.;
- H-9 - Booklet also issued by the National Cash Register Company, Dayton, Ohio (Merchants' Service), entitled "Pricing Merchandise Properly", discussing questions of markup and margins, etc.;
- H-10 - A booklet issued by the National Cash Register Company, Dayton, Ohio (Merchants' Service), entitled "Expenses in Retail Businesses", consisting of 38 pages of reference tables;
- H-11 - The issue for January, 1953, of the periodical of the Accounting Corporation of America, entitled "Mail-Me-Monday", the third page of which is headed "Mail-Me-Monday analysis", and concerns "Service Station Operations in the United States - by Gross Volume Groups - Comparative Analysis Operating Ratios for the Period January 1, 1952, to October 1, 1952";
- H-12A- The February, 1953, issue of "Mail-Me-Monday" re nation-wide trends in service station management, for the period January 1, 1952, to November 1, 1952, in which we were referred to the fourth page, entitled "Management Guide Compiled for the Exclusive Use of Clients Operating Service Stations". This gives data with respect to the percentage of costs in relation to the amount of gross sales, gross profits on sales, total operating expenses and resulting net profit. It relates to service stations grossing under \$25,000 of sales per year;
- H-12B- Similar information for the same period, for service stations grossing \$25,000 to \$50,000 annually;
- H-12C- Similar information for the same period for service stations grossing \$50,000 to \$100,000 annually.

These last three exhibits cover "Area 9", which is described as the "West Coast", U. S. A.

H-13 - A document issued by the Dominion Bureau of Statistics of Canada, entitled "Operating Results and Financial Structure of Filling Stations and Garages, 1950".

The witness said that he was referring to this document in relation to the item entitled "Gross Profit", near the middle of the first section, which gives the following "Gross Profit" percentages:

"Owned stores with annual net sales of

(i)	\$10,000 to \$19,999 . . . . .	17.82
(ii)	\$20,000 to \$49,999 . . . . .	16.71
(iii)	\$50,000 to \$99,999 . . . . .	16.80
(iv)	\$100,000 and over . . . . .	15.35

Rented stores with annual net sales of

(i)	\$10,000 to \$19,999 . . . . .	20.70
(ii)	\$20,000 to \$49,999 . . . . .	18.60
(iii)	\$50,000 to \$99,999 . . . . .	19.51
(iv)	\$100,000 and over . . . . .	19.26"



## CHAPTER VIII

### APPRAISAL OF THE EVIDENCE OF THE EXPERTS

The undersigned have carefully examined and compared all of the exhibits tendered on behalf of the parties implicated in this matter. They have also considered and discussed at length the evidence of Dr. Purdy and Professor Vukelich. An objective consideration of the whole matter leads us to the conclusion that, even if we were to accept for the moment the proposition that the fixing by agreement of a uniform increased resale price for gasoline should not in itself be considered detrimental to the public, the attempt to show that the new prices were actually reasonable and even required by the circumstances has failed. Furthermore, actual detriment, as will be seen, does appear from the whole of the evidence, inter alia, from the very exhibits filed by Dr. Purdy and Professor Vukelich.

In our opinion, no dependable conclusions can be drawn from an examination of the exhibits submitted, namely, Exhibits H-4, H-5, H-6, H-7, H-11, H-12A, H-12B, H-12C and H-13.

Although this was not expressly stated, the table entitled "Operating Ratios Service Stations", found in Exhibits H-4 and H-5, was used apparently to demonstrate two things:

- (a) that the gross margin in the United States is higher than that found in Canada and more particularly in the Vancouver area;
- (b) that, with an average gross margin of 24.86 per cent (which is the figure arrived at in calculating the average gross margin of the 15 categories of service stations listed in the table), an average net profit of only 2.24 per cent (arrived at through the same calculation) is obtained by American service station operators after total expenses have been deducted.

From these premises the expected conclusion is, apparently, that Vancouver operators, with only a 20 per cent margin, would find it difficult even to make both ends meet. Although this was not stated either, the exhibits may also have been used to establish that the expense of operating a service station normally runs somewhere between 20.3 per cent and 24.4 per cent of the total gross sales.

However, the table does not provide convincing proof for either of these conclusions. Any conclusion arrived at on the basis thereof would necessarily be misleading. In this respect, the following remarks appear to us to be in point:

(1) In Exhibits H-4 and H-5, the salary paid to himself by the owner of the service station is included among the "expenses" to be deducted from the gross profit in order to ascertain the "net profit". We are not concerned with the oft-repeated arguments of accountants and economists concerning the propriety or otherwise of including the owner's salary in the general expenses of a business. In any event, they have not resolved the question. It is certain that for some purposes the owner's salary is not treated as business expense. For example, for income tax purposes it is added to the reported profits of a one-man enterprise and treated as income. Even if it were admitted that, for a proper comparison of the expenses of owner-operated stations with stations operated by a paid manager who is not the owner, an allowance should be made in respect of the owner's salary, it would by no means follow that the full amount which he happens to report as salary should be allowed. Until it is shown that in each case the amount reported as salary was fair and reasonable, and in proportion to work performed, and did not, in fact, include all or part of what should properly be called return on invested capital (the profit that a non-working owner would have received), statistics compiled on this basis are not very useful. The average net profit arrived at by using such figures may very well not conform to the actual situation.

(2) This calculation of "Total Expense" in Exhibit H-4 and H-5 includes another contentious item under the heading "All Other Expense", which accounts for an average 3.17 per cent of gross sales for the 15 categories concerned. This item was left unexplained, and it may well be that some of these "other expenses" represent actual profit in the way of expense chargeable to operations but made for the use and benefit of the owner or operator of the service station. If this should be the fact, it would increase the actual net profit above 10.1 per cent.

(3) The 1,131 service stations which made returns to the National Cash Register Company were all American enterprises. We fail to see on what basis the average total expenses of American stations can be safely used as a starting point from which to arrive at a fair and accurate calculation of the average net profit of Canadian stations in the Greater Vancouver area. In point of fact, the only Canadian figures which were given to us contradict, or at least differ from, those arrived at through American figures. (See Exhibits H-6 and H-13.)

(4) On the question of the difficulty of determining average expenses, reference may be made to Exhibit H-13, which

was filed for the purpose of establishing that in 1950 gross profits in gasoline stations in Canada ranged from 16.35 per cent of gross sales to 20.70 per cent. This exhibit, which groups the dealers in 8 categories, also contains average figures with respect to total operating expenses. It is noted that, among the various categories, such expenses vary from 7.46 per cent to 14.99 per cent of gross sales, with average operating expenses of 10.6 per cent for the 8 groups. This is a very different figure from those given in Exhibits H-12A, H-12B and H-12C for American stations.

(5) Exhibits H-12A, H-12B and H-12C all set out, on page 3, a table entitled "Service Station Operations in the United States -- by Gross Volume Groups, Comparative Analysis Operating Ratios, for the period January 1, 1952, to November 1, 1952". For the average of all groups of service stations, the "Total Expenses" are stated to have been of the order of 16.38 per cent for this period, and of 16.10 per cent for the same period in the preceding year. We note that these "Total Expenses" are composed of two items - "Fixed Expenses" and "Controllable Expenses". The latter term evidently refers to expenses which may be reduced or expanded, according to circumstances, and is said to include "Outside Labour, Operating Supplies, Gross Wages (Not Including Proprietor Wages), Repairs and Maintenance, Advertising, Car and Delivery, Bad Debts, Administrative and Legal, Miscellaneous Expense". The "Fixed Expenses" include "Rent, Utilities, Insurance, Taxes and Licenses, Interest, Depreciation". For the year 1952, out of the 16.38 per cent shown for total expenses, 10.57 per cent falls under "Controllable Expenses". For the year 1951, out of total expenses of 16.10 per cent, 10.39 per cent falls under "Controllable Expenses". All this involves a large element of relativity, which requires consideration and which was not explained by the expert witnesses in giving testimony.

(6) The note at the bottom of the table relating to operating ratios in service stations reads as follows (Exhibit H-4): "All of the reporting concerns obtained the major portion of their income from the sale of gas and oil. Almost all of them carry some accessories. Confectionery, soft drinks and food are sold by several of the reporting concerns." Referring to page 3 of Exhibit H-4, we note that the gross profit on the sale of automotive accessories is 40 per cent. According to this exhibit also, the average gross profit on all T. B. A. (tires, batteries and accessories) items is of the order of 39 per cent. No evidence was given which would enable us to estimate what part the sale of accessories plays in the case of the stations which reported to the National Cash Register Company, or to what extent such sales affect the gross margins stated therein. In the absence of further particulars, the figures given in this exhibit have little probative value. We further note that neither the exhibit itself nor the oral evidence indicate the period or even the year which the figures cover or in which they were obtained. The exhibit itself is undated.

Turnover and Increase in Sales Volume

As we have just seen, no truly comparable data were submitted to us tending to support the proposition that the uniform prices of regular and premium gasolines brought about by the unanimous adoption of the new markup were fair and reasonable. More serious still appears to be the total absence in the evidence of any reference to the question of turnover or of gross sales volume. We have purposely used these two expressions of "turnover" and "gross sales volume" alternatively because it appears to us that, with respect to the distribution and sale of a commodity like gasoline, at the retail level, any increase in the yearly output or volume will necessarily indicate a corresponding increase in turnover. As a matter of fact, inventory being limited to the size of the service station tanks, there can be no change in the yearly sales volume without a direct corresponding change in turnover. The identification here of greater volume with greater turnover is all the more important, in view of the fact that increased turnover with the same profit ratio means greater profits on actual investment. No evidence was presented to us, on either side, to establish what expansion has taken place in recent years in the total retail sales volume of gasoline, nor to compare expanding sales with the number of retail outlets operating in successive years. We deemed it our duty to inform ourselves on the subject. In so doing we thought it advisable to rely exclusively on official figures and data, available at all times to all the parties concerned. With this in view, we consulted statistics and data from the Dominion Bureau of Statistics, Department of Trade and Commerce, Canada, and also the Annual Reports of the Coal and Petroleum Control Board of British Columbia.

The witnesses heard before us referred chiefly to the period from 1949 to 1953, as being a representative period for the purpose of determining material economic trends. Official figures for 1953 were not available. However, there were statistics, with respect at least to gasoline sales and to motor vehicle registration, down to and including the year 1952.

The following Dominion Bureau of Statistics table, compiled from figures supplied by the provinces, indicates the trend of gasoline sales in Canada as a whole and in British Columbia, for the period 1945 to 1952, inclusive:

Gasoline Sales, 1945-1952

Source: Provincial Governments

Year	Canada		British Columbia	
	Gross Sales	Net Sales <sup>(1)</sup>	Gross Sales	Net Sales <sup>(1)</sup>
	Gallons	Gallons	Gallons	Gallons
1945	915,695,718	662,616,532	74,621,447	53,491,977
1946	1,212,599,679	934,819,509	97,383,294	77,321,006
1947	1,371,571,683	1,032,907,444	117,497,292	86,744,883
1948	1,517,564,530	1,133,233,773	130,909,076	97,940,455
1949	1,683,717,067	1,254,882,212	142,297,406	106,274,347
1950	1,843,025,718	1,390,090,447	155,423,743	118,274,562
1951	2,049,811,661	1,528,905,858	173,070,142	130,625,675
1952	2,343,659,756	1,715,693,965	191,444,793	144,746,901

(1) Gross sales minus sales to non-highway users and tax-exempt highway users.

The column "Net Sales" is, we think, the more accurate guide to indicate the trend of retail gasoline movements because, though the figures therein given include commercial sales, they exclude "sales to non-highway users and tax-exempt highway users". An examination of the figures in the British Columbia "Net Sales" column leads us to the following observations:

- (a) In 1950, the sales of gasoline in British Columbia show an increase of 11.29 per cent on the 1949 sales, i. e. an increase of 12,000,215 gallons;
- (b) It should be remembered in this connection that, on June 8, 1950, by Regulation 9 (see Exhibit H-7, page 4), a 5-cent-per-gallon markup was allowed by the Petroleum Board, instead of the former 4.5 cents markup;
- (c) In 1951, the sales were 10.44 per cent higher than in 1950, and 22.81 per cent higher than in 1949, i. e., 12,351,113 gallons more than in 1950, and 24,351,328 gallons more than in 1949;
- (d) In other words, had the markup not been increased to 20 per cent and had it remained at 5 cents per gallon, the total gross profit in the year 1951 would have exceeded that of 1950 by some \$617,565, and would have exceeded the 1949 profit (when the margin was 4.5 cents only) by some \$1,748,957;

- (e) In 1952, the sales were 10.81 per cent higher than in 1951 and 36.20 per cent higher than in 1949, i. e., 14,121,226 gallons more than in 1951 and 38,472,554 gallons more than in 1949;
- (f) Had the markup not been increased to 20 per cent, and had it remained at 5 cents per gallon, the total gross profit in 1952 would have exceeded that of 1951 (on the same basis) by some \$706,061, and it would have exceeded the 1949 profit (when the margin was 4.5 cents) by some \$2,455,097.

The question naturally follows: To what extent have the fifteen districts forming the Greater Vancouver area benefitted by this increase in total provincial sales during the period concerned? No break-down for the Greater Vancouver or for the Vancouver City area was available from this source for the period. However, we think that a fair estimate can be made of the proportion in which the area concerned has profited by the overall increase, first by referring to changes in the retail sale of gasoline in the Vancouver district in relation to the whole province, during a representative period for which figures are available; then by ascertaining the relation of total motor vehicle registrations in the Vancouver district to total registrations in the province for a period down to and including the year 1952.

For this purpose, we have studied the Annual Reports of the British Columbia Coal and Petroleum Control Board for the years 1946 to 1950, inclusive, being their ninth, tenth, eleventh, twelfth and thirteenth reports. Each report contains a table described as "Table 1", and entitled "Summary of Gasoline Sales Made through the Various Bulk Plants for . . . by Districts and Zones". The data are broken down between "Resellers", "Commercial", "Marine", "Total", for each of the following areas: "Victoria", "Vancouver and District", "Balance of Province", "Totals". Table 1 of each of the five reports is annexed to this report as Appendices III, IV, V, VI and VII.

The figures we have used for the purpose in hand are those relating to gasoline sales made by "resellers" only, in Vancouver and district and also in the whole province. As these exclude commercial sales, they are necessarily at some variance with the figures in the foregoing table of the Dominion Bureau of Statistics.

The figures first establish that, during these five years, the Vancouver district accounted for a proportion varying from 50.34 per cent to 48.46 per cent of the total retail sales of gasoline (not including commercial, etc.) in the Province of British Columbia, as follows:

<u>Year</u>	<u>Sales in Vancouver and District</u>	<u>Total for Province</u>	<u>Relation of Vancouver and District to Total</u>
1946	32,289,565	64,137,550	50.34%
1947	38,501,417	77,551,902	49.64%
1948	42,834,776	85,726,655	49.97%
1949	46,587,696	95,373,825	48.83%
1950	51,945,637	107,182,686	48.46%

The fact that the proportion for 1950 was slightly lower than for 1946 is not necessarily indicative of a definite trend toward a gradual reduction of the Vancouver and district percentage. It is observed, for instance, that in 1948 the percentage rose from 49.64 to 49.97 per cent. Even if the figures are deemed to indicate a trend, the average annual decrease in percentage during these years was only .45 per cent per year. If the trend were to continue, it would bring the percentage of total sales for the Vancouver district down to 48.01 per cent in 1951 and 47.56 per cent in 1952.

What really does matter, in relation to Vancouver area business, is that the yearly volume of sales in the area rose, from 1946 to 1950, by 60.87 per cent, as follows:

<u>Year</u>	<u>Retail Sales in Vancouver and District</u>	<u>Per Cent Increase over Previous Year</u>	<u>Per Cent Increase over 1946</u>
1946	32,289,565		
1947	38,501,417	19.26	19.26
1948	42,834,776	11.23	32.65
1949	46,587,696	8.76	44.28
1950	51,945,637	11.50	60.87

That this increased volume of sales for the Vancouver area has been maintained since 1950, along with the area's percentage proportion of total sales in the province, would appear to be the necessary conclusion from figures giving the number of motor vehicle registrations throughout the period, down to and including 1952. The following table was obtained from the Dominion Bureau of Statistics (Department of Trade and Commerce, Canada:)

Number of Motor Vehicles Registered

<u>Registration Year</u>	<u>Canada</u>	<u>British Columbia</u>	<u>Vancouver</u>	<u>New Westminster</u>
1945	1,497,081	134,788	38,811	17,236
1946	1,622,463	150,234	50,617	24,154
1947	1,835,959	179,684	60,179	28,951
1948	2,034,943	202,126	66,078	33,658
1949	2,290,628	230,008	74,242	37,918
1950	2,600,511	270,312	88,608	44,140
1951	2,872,420	291,417	97,764	47,459*
1952	3,155,997	321,482	102,690	52,770*

Note: The registrations for Canada and British Columbia include motor cycles, which are shown below. The registrations for Vancouver and New Westminster do not include motor cycles.

Motor Cycles

	<u>Canada</u>	<u>British Columbia</u>
1945	14,194	2,506
1946	17,163	3,038
1947	26,129	4,364
1948	33,939	4,536
1949	39,994	4,681
1950	43,670	4,609
1951	43,189	4,144
1952	42,072	3,929

\* Includes issuance at Abbotsford, Chilliwack and Mission, which became issuing offices during 1951.

It will be observed that, deducting from the British Columbia figures the number of motor cycle registrations in the several years, total motor vehicle registrations rose from 150,234 in 1946 to 321,482 in 1952, in British Columbia, i.e., an increase of 115.73 per cent. During the same period, registrations in Vancouver proper rose from 50,617 in 1946 to 102,690 in 1952, i.e., an increase of 102.87 per cent. The cumulative registrations in Vancouver and New Westminster (which figures would seem to us more proper for comparison purposes in view of the inclusion of New Westminster in the districts established by the A.R.A.) give us an increase from 74,771 in 1946 to 155,460 in 1952, i.e., an increase of 107.94 per cent. A comparison between 1949 and 1952 shows that, for the whole of British Columbia, registrations were 40.92 per cent higher in 1952 than 1949. In Vancouver proper, they were 38.31 per cent higher in 1952 than in 1949. The cumulative registrations for Vancouver and New Westminster were 38.60 per cent higher in 1952 than in 1949.

The only conclusion which may be drawn from these figures is that, out of the overall increase in the sale of gasoline at retail in the province during recent years, the service station operators of the Vancouver area have retained a share proportionate to the established relation of their annual total sales to annual provincial sales.

It may be argued, by the proponents of the theory that no detriment was caused and that the 20 per cent increased markup had become necessary, that this yearly increase in the output of gasoline may well have been balanced by a corresponding increase in the number of service stations or outlets.

On this subject, we have not been able to find any satisfactory data relating to the number of garages and service stations, i.e., retail outlets, in the Greater Vancouver area, during each year of any representative period. However, if we look at the yearly reports of the Coal and Petroleum Control Board of British Columbia, we find a break-down for each year of the various types of gasoline outlets serving the public in the province, namely, garages, service stations (including company-owned), auto camp and sport pumps and outlets not rendering complete service to the public, outlets where the licence is restricted to sales to members of an association and to employees, outlets where it is restricted to aviation gasoline, and also marine outlets. For the purposes of this inquiry, obviously the only types of outlet with which we are concerned are "garages" and "service stations".

A study of these reports shows that, between 1946 and 1950, inclusive, the number of these outlets in British Columbia increased from 1,417 to 1,847, an increase of 30.34 per cent. The figures with respect to gasoline sold by "resellers", in the province, during the same period, show that, from 1946 to 1950, inclusive, the amount of gasoline so retailed increased from 64,137,550 gallons to 107,182,686 gallons, i.e., a percentage increase of 67.11 per cent. Thus, in the whole province, the percentage increase in gasoline sales during these five years was considerably more than twice as great as the increase in the number of garages and service stations.

While the above figures are for the whole province, they afford some illustration of the trend within the Greater Vancouver area. On this hypothesis, the conclusion follows that there is no such relation between the increase in the number of service stations and the increase in the total retail sale of gasoline as would justify the contention that the latter has been balanced or offset by the former. Unfortunately, the only certain figure we have in the evidence on this point, with respect to the Greater Vancouver area, is that, as of July, 1952, in the fifteen zones of that area there were some 520 garages and service stations. (Exhibit No. 130.) On the basis of the evidence this was probably not much more than 25 per cent of all service

stations and garages in the whole province at that time. When we remember that this particular group accounted for nearly 50 per cent of the total retail gasoline sales of the province, and when we also remember that from 1946 to 1950 the sales of gasoline in the Greater Vancouver area increased by nearly as great a percentage as the total sales in the province, the conclusion is almost inescapable that any increase in the number of outlets within this group, during the period concerned, must have been much less proportionately than the increase in gasoline sales during that period. In other words, there was a very substantial increase between 1946 and 1950 in the average amount of gasoline sold per station in the Greater Vancouver area.

In any event, whatever may have been the actual increase in the number of outlets within the Greater Vancouver area, any plea based on this situation would be of very doubtful merit.

Bearing in mind the relatively much greater increase in overall sales volume, one could scarcely consider valid any argument alleging an increasing difficulty in doing efficient business because of the increase in the number of outlets.

Even if there are, in fact, too many outlets, surely this would not assist an argument in favour of a higher margin on retail sales. Nothing in the evidence indicates that the public interest or efficient gasoline distribution at the retail level in the Greater Vancouver area require that all of the present service stations be maintained in operation. Surely, the fact that a given number of service station operators have entered upon this business as their way of earning a living does not impose any moral or economic duty on the gasoline users of the Vancouver area to support the burden of any general increase in markup which may have become expedient in order that all of these service station operators may earn what they consider proper revenues. Retailing being a service to the public, it should be remunerated, not on the arbitrary basis of the collective needs of all those who have decided to enter the market, but rather on the basis of relative efficiency, utility and public demand. This becomes still more important when the commodity in question is one which, by its nature and widespread daily use, has become vital to the community. Beyond question, gasoline is such a commodity. As early as 1936, in his report on the Petroleum Industry in British Columbia (page xiv), Mr. Justice Macdonald referred to this type of commodity as a "product of vital necessity". Since then, general public use of and dependence upon gasoline have become even more apparent.

One last remark should be made on this question of sufficient and insufficient markup. If the situation among retail gasoline distributors early in 1951 was in fact such that a 5-cent-per-gallon margin had become insufficient, notwithstanding the increase in total yearly sales, it would seem that, when the parties mentioned in

the Statement of Evidence were seeking to prove the reasonableness of the 20 per cent markup, actual profit and loss or financial statements could have been filed, consolidated into one or a few exhibits, to demonstrate their financial difficulties. No evidence whatsoever was tendered which could assist the Commission, for the purpose of establishing that service stations could not possibly operate on a 5-cent-per-gallon margin, or even that such a margin would not yield a profit.

Nor was any evidence tendered that during recent years any gasoline dealers had become bankrupt or been forced to close their stations or to dispose of their business, or to seek some other kind of business or employment, by reason of unprofitable conditions in the gasoline retailing business. If conditions were at all bad, evidence of this kind must have been available in abundance. Its total absence, coupled with increases over the same period in the number of gasoline outlets in the area, and the apparent general unwillingness of dealers to risk any increase in the retail markup, except in concert with all the others, all these facts afford strong indications that their business was not unprofitable.

### Shrinkage

In cross-examination by Counsel for the Retail Merchants' Association and George R. Matthews, Professor Vukelich referred to the report of the Royal Commission on Petroleum Products, and stated that gasoline had been found, in the course of that investigation, to be affected by shrinkage in proportions up to 5 and even 7 per cent. Professor Vukelich must have had in mind pages 51 and 52 of the report, entitled "(h) Retailers' Loss from Shrinkage of Gasoline", and "(i) Suggested Method of preventing Shrinkage Losses" (Sessional Papers, First Session, Nineteenth Parliament of the Province of British Columbia, Session 1937, Volume Two). It is true that Mr. Justice Macdonald found at that time that losses from shrinkage affected the total volume of retail gasoline, in varying proportions ranging from 0.93 per cent at Nanaimo to 8 per cent at Grand Forks. Mr. T. A. Fee, an expert heard on the matter during Mr. Justice Macdonald's inquiry, had "estimated the loss by shrinkage at 3%". However, the latter added that he had perfected equipment which would provide for such a perfect control that "loss would be less than one-half of 1% regardless of the temperature, from zero to 110°", on the basis of an ideal temperature of 62°. When the present investigation began, more than fifteen years had elapsed since the filing of the Macdonald report. Technical improvements had been made in the interim. In any event, if this matter of shrinkage had been considered of serious importance in the present case, additional evidence would undoubtedly have been presented by the parties. As a matter of fact, it appears from the testimony of Mr. Collin Virteau that a special committee was set up by the A. R. A. to look into this particular question. The findings of this committee, or at least the data which it had obtained at the date

of the hearing by this Commission early in 1953, could have been supplied for our consideration. No evidence of this kind was tendered.

### Actual Detriment

Not only did the evidence tendered in justification of the 20 per cent increase not succeed in convincing us that the increase was necessary and was to be expected under the normal play of economic factors, but, quite apart from the fact that the agreement itself was objectionable in that it abolished price competition throughout the area, it appears on the whole of the evidence that actual public detriment has been established.

Exhibit H-7, page 1, prepared by Professor Vukelich, shows how, in July, 1951, by the automatic effect of applying the new 20 per cent markup, the retail price of regular gasoline increased by 1.3 cents per gallon, and the retail price of premium gasoline increased by 1.7 cents per gallon. The price of regular gasoline rose from 36.5 cents to 37.8 cents, and that of premium from 38.5 cents to 40.2 cents. In August, as the result of an increase of .5 cents in the wholesale tank-wagon price of gasoline, both regular and premium were increased by .6 cents because of the 20 per cent markup. The 20 per cent markup was maintained after July, 1951.

On examining the operation of the 20 per cent markup, the first thing we note is that there is evidently no relation between an increase in actual distribution expense and the automatic 20 per cent addition on any variation in the wholesale price. The markup is theoretical and arbitrary, and does not show any necessary relation to practical economic realities.

The figures discussed earlier in the present chapter concerning the actual yearly increase in the total volume of gasoline sold at the retail level show that the distributors had benefitted substantially by the additional profits resulting therefrom. Then, with no adequate proven justification, they agreed among themselves to force the consumer public to support the burden of a higher margin on these increased sales.

Surely not all the distributors of gasoline within the area have exactly the same overhead expenses, and there must be some whose business is carried on more efficiently than others. Furthermore, depending on the proportionate volume of sales of gasoline and of tires, parts and accessories, the profits earned will not be the same in all cases. A reference to Exhibit H-6, filed by Dr. Purdy, at pages 3 and 4, illustrates this fact. This exhibit, prepared by Professor Vukelich, tends to show that, on a total volume of \$100,000 of sales, a net profit of \$7,120 would be obtained where the sales of gasoline amount to 50 per cent of the total sales volume (the

balance being obtained from oil, parts and accessories, and labour), whereas the profit would be \$3,830 only where gasoline sales amount to 75 per cent of the gross. In both cases the exhibit assumes identical operating expenses of \$16,500. These figures indicate that for service stations where revenue from the sale of parts and accessories forms a high proportion of total sales, the price of gasoline could well be lower than elsewhere, while still leaving overall profit at a reasonable level.

Under the fixed agreement made here, the retailers decided that none of them would pass on to the public, either in whole or in part, the benefit of increased profits on parts and accessories or of more efficient merchandising and service station operating. This leads us to remark that page 1 of Exhibit H-6 and also page 2 of Exhibit H-7 show that actually, in many states of the United States there is a range of prices varying between individual gasoline stations, with respect to both regular and premium gasoline, although the cost to all retailers in the same place appears to be identical for the same grade. For example, these exhibits show that, on February 28, 1953, in San Diego, California, premium gasoline retailed at 30.5 cents to 32.2 cents per gallon, leaving a profit of 5.5 cents to 7.2 cents per gallon. For the same place and date, regular gasoline retailed at 28.5 cents to 28.9 cents per gallon. Similar differences may be found for San Francisco - premium, 30.4 cents to 31.7 cents; regular, 27.9 cents to 28.7 cents. For Portland, Oregon - premium, 32.1 cents to 33.5 cents; regular, 29.6 cents to 31.8 cents. According to the exhibit, prices in Seattle were apparently uniform - 32.6 cents for premium, and 30.1 cents for regular.

Even if one were to accept Dr. Purdy's and Professor Vukelich's proposition that prices of gasoline were bound, as the result of normal economic factors, to reach a level equivalent to that brought about by the adoption of the 20 per cent markup, it would still be apparent that the public suffered some detriment. In the absence of agreement between the operators, it is more than likely that any such result would have been reached gradually, and would not have occurred everywhere, in exactly the same amount at the same time. If no such agreement had been in effect, most of the operators would have considered the situation very seriously and at length before increasing prices, and would not have done so unless actually forced by circumstances, because the assurance of a total absence of all competition would not then have existed.

Our opinion on the last-mentioned point is strongly supported by the following facts:

(1) At the R. M. A. Automotive Division's meeting of April 20, 1951, the meeting felt that "desirable as this may be, it might be very difficult to establish and maintain the 6 cents spread";

(2) At the meeting of April 20, after approving a motion to adopt a 6-cent markup, it was decided not to publish that the price of gasoline would be increased 1 cent per gallon, because "the questionnaires received did not guarantee that such a raise would be approved by a sufficient number".

Clearly, the operators were very doubtful of the advisability of increasing their markup to 6 cents, not being sure that a sufficient number would fall in line. In the face of this obvious fact, how can it be said that the uniform adoption of a still larger margin through a 20 per cent markup was the result of or would have resulted from normal economic factors?

## CHAPTER IX

### SUMMARY OF FINDINGS, AND CONCLUSIONS AS TO THE PUBLIC INTEREST

#### 1. Summary of Findings

The evidence more fully discussed and analyzed in the foregoing chapters of this report shows the successful formation and operation of a combine, among gasoline retailers of the Vancouver area (including the City of Vancouver, Sea Island, Lulu Island, Twigg Island, the Municipality of West Vancouver, the City and District of North Vancouver, the City of New Westminster and the Municipality of Burnaby), in the Province of British Columbia. The agreements or arrangements disclosed were designed to have and did have the effect of fixing a retail price of gasoline in the said area, by the adoption of a uniform 20 per cent markup on the wholesale tank-wagon price (including tax), as of July 10, 1951, and also the further effects of enhancing the retail price of gasoline and preventing or lessening competition and substantially controlling the sale of gasoline at retail in the area concerned; the whole to the detriment and against the interest of the public.

The facts may be summarized very generally as follows:

(1) In British Columbia, the retail price of gasoline was controlled by a public authority, the Coal and Petroleum Control Board, until April 18, 1951. The retail margin allowed by the Board in the Vancouver area was then 5 cents over and above the tank-wagon price including tax. Prior to June 8, 1950, the authorized margin had been 4.5 cents.

(2) At the beginning of 1951, attempts to persuade the provincial Government not to release the aforesaid control were made by the British Columbia Branch of the Retail Merchants' Association. These attempts were not successful.

(3) The Automotive Division reported to its members on March 15, 1951, stating that decontrol would be effected. The bulletin noted the "great importance to have a strong Association at this time, with the trade facing a very critical period", and urged those of the operators who had not done so yet to send in their \$10 contribution, they, in turn, to be "credited with six months' paid

membership in the Retail Merchants' Association". This bulletin was accompanied by a form of undertaking, which the recipients were invited to sign and return to the Automotive Division of the Association. The undertaking involved an agreement to maintain the existing spread and to increase it by 1 cent per gallon at the first increase in the wholesale tank-wagon price.

(4) At a meeting of the Executive of the Automotive Division held in Vancouver on April 20, 1951, Mr. George R. Matthews, General Manager of the British Columbia Board of the Retail Merchants' Association, stated that he had been informed that the wholesale price of gasoline would be increased by three-tenths of a cent per gallon on April 23; whereupon, Mr. Collin Virteau suggested that the time had come to increase the retail margin from 5 cents to 6 cents per gallon. As, however, the number of signed undertakings received from the members up to then did not guarantee that a sufficient group of dealers would adopt such an increase, the meeting agreed that it would be more appropriate to first hold "neighborhood meetings of service station operators . . . with a view to getting their support on an increase in the margin on gasoline".

(5) In the meantime, a group of service station operators in the Kerrisdale-Marpole area of Vancouver, who were not members of the Retail Merchants' Association, had been holding meetings in their own area, with the intention of forming an association which would be able to uphold their interests and assist in securing a higher retail margin on gasoline.

(6) The two groups, i.e., the Automotive Division of the R.M.A. and the Kerrisdale-Marpole group, soon joined forces, in order to avoid duplication of effort and loss of time. They agreed on the advisability of forming a distinct association, under the name of Automotive Retailers Association, an object of which would be to seek the establishment, in the Vancouver area at least, of a uniform and higher retail markup on gasoline. The exchange of ideas and points of view between the two groups was achieved at first through a "steering committee", consisting of four delegates appointed by the Automotive Division of the R.M.A. and four appointed by the Kerrisdale-Marpole group.

(7) As a result of these discussions, the following points were in substance agreed upon:

- (a) The City of Vancouver would be divided into a number of districts or zones, and organized by districts;
- (b) In each district, a special meeting would be held among the local service station operators, where the reasons for the formation of the new association would be explained, and where the ideas of the local group concerned could be

ascertained as to the most appropriate way of dealing with this question of markup;

- (c) In each of these local districts, two delegates to the Council of the new association would be elected to represent the district;
- (d) In the meantime and pending the formal setting up of this new association, all operators joining the movement would take interim membership for six months in the R. M. A.;
- (e) The said R. M. A. (British Columbia Branch) would perform the necessary services, secretarial and otherwise.

(8) For the above purposes, the city was first divided by Mr. Kinneard, Secretary of the R. M. A., Automotive Division, into ten zones, to which five other zones were subsequently added, so that the area of the activities of the new association then included the City of Vancouver, together with Sea, Lulu and Twigg Islands, as well as West Vancouver, North Vancouver, New Westminster and Burnaby.

(9) The services of Mr. J. L. Kinneard were, to all intents and purposes, put, by the R. M. A., at the disposal of the new Automotive Retailers Association, to assist in the preparation and holding of the several local meetings, and in further pursuance of the objects of the Association.

(10) The fifteen district meetings were all held between May 17 and June 20, 1951. At each meeting, Mr. Kinneard explained the developments and events which had led up to the holding thereof, and the members were asked to state their opinion as to the type of markup they wished to have established at the retail level, their decision or recommendation on the matter to be reported by their respective delegates to the first meeting of the Central Council of the new Association. At each meeting, two delegates were elected for the district or zone, as follows:

<u>Zone</u>	<u>Delegates</u>	<u>Date</u>
No. 1, Hastings East	Leo Mogensen, Frank Lee	May 21, 1951
No. 2, Grandview	Art. Mendlin, Ed. Qualey	June 19, 1951
No. 3, Kingsway	Don Anderson, Hugh Smith	May 22, 1951
No. 4, South Vancouver	Art. Powell, Milt. Read	May 28, 1951
No. 5, Fairview	Doug. Darling, Vern Rankin	May 31, 1951
No. 6, Kerrisdale-Marpole	S. Morrey, Collin Virteau	May 17, 1951
No. 7, Dunbar-Point Grey	Joel Gordon, Jack Reid	June 4, 1951
No. 8, Kitsilano	Murray Martin, Frank Murray	June 5, 1951
No. 9, West End	Harvey Lowe, Paul Faris	June 7, 1951
No. 10, Downtown	Tom Hammond, Chuck Lew	June 14, 1951
No. 11, Richmond	J. Gollner, Frank Quirk	May 30, 1951
No. 12, West Vancouver	Bill Grout, Norm. Macey	June 11, 1951
No. 13, North Shore	Dick Smith, Dick Kline	June 12, 1951
No. 14, New Westminster	Cy. Mark, Dave McLennan	June 18, 1951
No. 15, Burnaby	Earl Parsons, Maurice Marisco	June 20, 1951

(11) Application forms for membership in the Automotive Retailers Association were distributed at each of the meetings. The fee payable by the subscribing members was set at \$10. It entitled the members to an interim six months' membership in the R. M. A., the Automotive Retailers Association to be credited with the pro rata portion of any unexpired membership at the time of formal transfer of membership from the R. M. A., Automotive Division, to the new Association.

(12) At the date of the first hearings by the Commissioner of the Combines Investigation Act in July, 1951, the Automotive Retailers Association counted 378 members in good standing out of a total available number of 487 gasoline retailing outlets in the area. Among the non-members were the five company-owned-and-operated stations of Standard Oil Company of British Columbia Limited.

(13) On June 7, 1951, by which date a majority of the district meetings had been held, and it had become evident that agreement on the principle of a 20 per cent markup over wholesale cost (including tax) would be reached, a letter was sent by the Retail Merchants' Association of Canada from Vancouver to all the service station operators throughout the province (except those located within the Vancouver area), informing them of the Vancouver district meetings and of the fact that the retailers in Vancouver had agreed that the retail margin should be in the nature of a percentage on cost

of gasoline, rather than a fixed markup of so many cents per gallon, and that they had also agreed on 20 per cent as being the very minimum which should be adopted. The letter was over the signature of George R. Matthews, General Manager, British Columbia Board. Annexed to it were:

- (a) A schedule indicating what the retail price of gasoline would be, on the basis of a 20 per cent markup on cost, for varying tank-wagon costs (including tax), ranging from 21.0 to 41.0 cents per gallon;
- (b) A questionnaire to be completed and returned to the Automotive Division of the R. M. A., asking if the current spread on gasoline was considered too low, and, if an increase was favoured, also asking if the recipient believed a 20 per cent markup should be the minimum charged, and if he would "establish a retail price based on the markup as suggested in the schedule, when advised by our office". (For those not already members of the R. M. A., the questionnaire contained an additional paragraph inviting the recipient to join the Automotive Division and to enclose \$10 for six months' membership dues.)

(14) The first meeting of the thirty delegates to the Central Council of the Automotive Retailers Association (to which the members of the Steering Committee and some members of the Automotive Division who had not been elected delegates were invited) was held in Vancouver on June 21, 1951. A temporary executive was formed, consisting of Mr. Collin Virteau as Chairman, and Mr. S. Morrey as Vice Chairman, and of the twenty-eight other delegates, as well as of those members of the Steering Committee who had not been elected delegates. It was reported to the meeting that the various district meetings held during the few preceding days had agreed on 20 per cent as being the markup to be adopted. However, whereas it had been originally intended that such increase at the retail level would take place at the time of the next increase in the wholesale tank-wagon price (including tax), the meeting decided that the new margin would come into force upon notice to be given by the zone delegates to the operators in their respective districts.

(15) Other zone meetings were held shortly afterwards, and by the beginning of July, 1951, the dealers had become anxious to adopt the 20 per cent markup without further delay. Pressure to this end had built up to such an extent that Mr. Virteau and Mr. Morrey were forced to take immediate steps.

(16) Mr. Virteau and Mr. Morrey decided to ask the Automotive Division to prepare a new retail price schedule based on the 20 per cent markup but covering a wider range of prices than the

one previously circulated. In the course of discussions with Mr. Virteau at this time, Mr. George R. Matthews suggested that July 10, 1951, would be an appropriate date for the simultaneous adoption of the new markup. A card bearing the new price schedule was then immediately printed and sent to the 504 garages and service stations in the Vancouver area, and also to 1,231 garages and service stations throughout the rest of the province, with the notation, "effective throughout British Columbia, July 10, 1951".

(17) In the meantime, Mr. Virteau had communicated with all of the twenty-nine other zone delegates, and had obtained their assurance that, in their opinion also, July 10, 1951, was an appropriate date. As a reminder, the following notice was sent, on Mr. Virteau's instructions, through the R. M. A., to all zone delegates:

"The Printed Recommended Retail Price Charts will be mailed from the office, Friday, July 6th.

Will the Delegates please check to see that each Service Station in their Zone has received a card and that same is made effective Tuesday Morning, July 10."

(18) The zone delegates communicated with each of the Association members located in their respective districts, and non-members were also advised of the intention to make the new markup effective on July 10, 1951, in the Vancouver area.

(19) On the said date of July 10, 1951, all the retail gasoline outlets located within the fifteen zones of the Vancouver area did actually fall in line with the plan, with the exception of the five stations owned and operated by the Standard Oil Company of British Columbia Limited, which adopted the markup some two days later. In August, 1951, Mr. Kinneard wrote:

". . . now almost every dealer throughout the province is receiving the 20 per cent on cost outlined in the recommended price chart. Certainly this is an indication of what can be done if retailers will work together through their trade organization to deal with their mutual problems."

(20) Subsequently, the new 20 per cent markup was maintained in the Vancouver area and generally throughout the province. In July, 1952, Mr. Kinneard gave evidence that: "In the Metropolitan Vancouver Area I believe the vast majority of stations [were] operating on the 20%", and Mr. Virteau stated: "Well, now, I don't know of any [stations] that haven't the recognized price on their pumps in Vancouver."

As discussed more fully in Chapter V of this report, the persons and corporations more particularly concerned in the fore-

going combine, in our opinion, are the following:

- (a) The Retail Merchants' Association of Canada;
- (b) George R. Matthews, General Manager of the British Columbia Board of the said R. M. A. during the period covered by this report;
- (c) J. L. Kinneard, Trade Secretary of the Automotive Division of the R. M. A., who also acted as Secretary for the Automotive Retailers Association and as the organizer of the several zone meetings which led to its formation;
- (d) The members of the Steering Committee set up jointly by the Kerrisdale-Marpole group and by the Automotive Division of the R. M. A.;
- (e) Each of the zone delegates elected by the fifteen districts who participated in the activities of the unincorporated Automotive Retailers Association prior to and around the date of July 10, 1951.

(21) The incorporated body known as the A. R. A., which replaced the former unincorporated Association in March, 1952, did not actually participate in the formation of the combine. For the reasons and subject to the reservation more particularly stated in Section 4 of Chapter V, it is not responsible for the detrimental arrangements and agreements described.

(22) For the reasons stated in detail in Section 6 of Chapter V, Edward Alexander Bence, the Marketing Manager of the Standard Oil Company of British Columbia Limited, was not, in our opinion, concerned in the activities described in this report. For the same reasons, we would also exonerate the Standard Oil Company of British Columbia Limited from all blame.

## 2. Conclusions as to Public Interest

In our opinion, the arrangements and agreements described herein and their consequent enforcement were likely to operate, and, in fact, did operate, against the interest and to the detriment of the consumer public, and were in direct conflict with the principles and purposes of the Combines Investigation Act.

The opinion of the Commission as to their effect on the public interest has been fully stated in Chapters VI, VII and VIII of this report, where, in dealing with the principal arguments raised by

Counsel for the various parties at the hearing, we were necessarily called upon to formulate our conclusions on this point,

It was first argued that the arrangements and agreements disclosed during the investigation should not be reported upon unfavourably by this Commission, because no positive proof of specific public detriment had been adduced, and because, in the opinion of Counsel, it was the responsibility of the Combines Commissioner (now Director of Investigation and Research) to obtain such evidence in the course of his investigation, or at least to offer it at the hearing before the Restrictive Trade Practices Commission. It was argued alternatively that, even if such onus was not incumbent on the Combines Commissioner, the expert evidence tendered at the hearing had effectively rebutted any possible presumption that the plan made effective on July 10, 1951, had been detrimental to and against the interest of the public.

The first of these propositions cannot be accepted, having regard to the express terms of the Combines Investigation Act and the uniform Canadian jurisprudence on the point.

(a) According to Section 2(1) of the Act, any combination having for its object the fixing of a common price or a resale price is deemed to be objectionable if it "has operated or is likely to operate to the detriment or against of the public". Parliament obviously intended to preclude the formation or operation of combinations, not only in cases where it may be verified that the public has suffered actual detriment as a consequence thereof, but also in cases where, on the face of the arrangements made and the circumstances in which they have been entered into, they are likely to operate in such a prejudicial manner.

(b) The judges of our courts, in applying this aspect of our legislation to specific cases, appear to have held quite uniformly that an agreement to fix a common resale price for a given commodity throughout an area of substantial importance is, by its very nature, necessarily contrary to the interest of the public. In our opinion, it must at least be admitted that proof of such an agreement establishes prima facie evidence of public detriment, and that it should be deemed reprehensible, unless, in the light of all the circumstances, reasonable and convincing justification therefor is given, showing clearly that the public could not have been affected prejudicially thereby.

(c) Under our economy, which is primarily one of free enterprise, the essential interest of the public in the existence of competition is accepted as a fundamental principle. This right of the public is automatically interfered with whenever arrangements are made which are designed to prevent the interplay of normal competitive factors, such as freedom on the part of dealers in a

given commodity to set their own prices according to their individual circumstances. An agreement or arrangement to set a common resale price over a considerable area for a commodity in general use, more especially where there is no practical substitute for the commodity, can have but one result if it is made uniformly effective, viz., the complete elimination of price competition in which the public has this essential interest. Such was the case here, where the application of the plan was unanimous, where the area covered was considerable and where the commodity involved, gasoline, was in such general use that the public had no alternative but to pay the prices so fixed. This lack of alternative was emphasized by the fact that for gasoline there is no readily available substitute.

(d) In normal circumstances, price control cannot be considered a safe or fair regulator of prices. Therefore, it should only be resorted to in case of necessity in the public interest. Free competition will always be a more normal regulator, and, except under very special circumstances, will result in prices that are not unfair to either the distributor or the consumer. Price control being an exception, justified only in cases dictated by a superior public interest, it should not be left in the hands of private citizens or private organizations. Only a public authority, such as Parliament, the Government, or an administrative body responsible to the representatives of the people, should be entrusted therewith. Human nature being what it is, we may be sure that price control, exercised by persons who have a direct interest as sellers of the commodity being regulated, will result in one-sided quasi legislation, to the very probable detriment of the public.

We cannot agree, either, with the second proposition of Counsel that the expert evidence had successfully rebutted any presumption of public detriment which might arise from the circumstances disclosed. As will appear from consideration of the reasons stated in Chapter VII and from our discussion of the expert evidence, we are of opinion that the parties concerned have failed to rebut the onerous presumption raised by their agreements or arrangements, and have failed to establish either that, on and after July 10, 1951, the consumer public in the Greater Vancouver area could not or that it did not suffer detriment thereby. It had become impossible to buy gasoline, regular or premium, in the said area, at any station, at prices lower than those then fixed. Much to the contrary, the evidence tends to show that the public not only was likely to be affected, but did, in fact, suffer detriment.

(a) It appears that, even in the field of gasoline retailing, there exist differences as between modes and cost of operation, relative degree of efficiency and composition of overall gross sales of the various service stations. In other words, there is no uniformity in the returns accruing to their respective operators from gasoline retailing outlets. The business of some service stations is confined to

a greater extent than others to the exclusive sale of gasoline. Some, on the other hand, do an important part of their business in automobile parts and accessories, and there are some which, besides dealing in gasoline and parts and accessories, also engage extensively in the garage business as such. These various types of service stations, even given the same efficiency in operation, will bring to their owners quite different net annual returns in relation either to total sales or to capital invested. The variations will be even greater if we take into consideration the matter of relative efficiency. There consequently appears to be a margin within which certain operators would be able, if so inclined, to let the public benefit by lower prices on gasoline, either by way of passing along savings in the operation of their business, or as a step taken with the hope of securing and maintaining a more numerous clientele while still make a reasonable profit. The arrangements under study here precluded all possibility of the public benefitting by any such action.

(b) At all events, there was no bargaining room left for any consumer to try to obtain gasoline anywhere within the area at prices which he might deem more suitable and convenient. In our opinion, this possibility for the consumer public to seek better prices from retailers forms part of a system wherein workable and true competition exists.

(c) Even admitting, for purposes of discussion, the argument of the experts that prices were bound to rise, through the interplay of normal economic factors, there is no reason to believe that they would necessarily have been raised by all the dealers by the same amount and at the same time. Again, if there had been no agreement or arrangement among the dealers, it seems unlikely, in view of the evidence as a whole, that an increase would have occurred as early as July 10, 1951. Furthermore, there is no basis on which we can determine that, if a general increase had occurred simply through the interplay of normal economic factors or local circumstances, it would necessarily have been in the form and precise amount of a 20 per cent markup on the tank-wagon cost including taxes. All that we can say with certainty is that, overnight, the consumer was compelled to pay, respectively, 1.3 and 1.7 cents more per gallon, for regular and premium gasoline, the prices being raised from 36.5 and 38.5 cents per gallon to 37.8 and 40.2 cents per gallon.

In short, the type of agreement and arrangement with which this inquiry has been concerned is one which, in our opinion, Parliament definitely intended to prevent when it enacted the present legislation, viz., one which is intended to create a situation whereby the public, in a given important area, finds itself suddenly deprived of the protection which is its right, and which is afforded by the maintenance in the market of the usual factors which assure unimpaired free competition.

In all fairness, however, it should be pointed out that the operators of gasoline service stations were genuinely concerned when it was announced that provincial government controls over gasoline prices and markups would be abolished. They feared a possible return to what they described as the chaotic conditions which had existed prior to the imposition of provincial controls. It also seems that they honestly felt the then prevailing markup did not afford them a satisfactory margin of profit in the face of rising wages, rents and other costs. We do not believe they entered into the objectionable agreements and arrangements described herein for the purpose of gouging more money out of the gasoline consuming public, but rather for the purpose of raising their own economic position to what they considered a more reasonable level. However, honesty of intention cannot justify activities such as were pursued here, and which are prejudicial to the public interest.



## CHAPTER X

### ROLE OF TRADE ASSOCIATIONS

Three important trade associations have been implicated in varying degrees in the setting up of the restrictive trade arrangements and agreements discussed in this report, one being a national group. For this reason, we deem it appropriate to comment briefly on the role of trade associations in our economy.

Trade associations have long been accepted by the people of Canada as economically valuable organizations, as a result of definite services rendered by them to industry, to their respective trades and to the public in general. They are frequently a means of industrial education and information to the public. Through their efforts, greater efficiency in merchandising may be achieved, and businesses, in many cases, have been saved from mistaken or dangerous courses of action, and even from failure.

The position which trade associations have succeeded in attaining imposes upon them definite public obligations and responsibilities. Their responsibilities are all the greater by reason of the status they have achieved and the influence they exert.

It scarcely needs to be stated that, when public authorities grant the status of incorporation to an association of businessmen, it is not intended that the charter should be used as a means of injuring trade and competition, with consequent ill effects upon the public. However, it is not sufficient that a trade association should refrain from becoming a party to infringements of nationally accepted economic principles, such as those embodied in our laws against combinations in restraint of trade and other restrictive business practices. They exist to develop more and better business, which end can only be achieved by actions which accord with the essentials of our economy. It should, therefore be their function to act as a public medium actively discouraging restrictive arrangements and practices that are prohibited by law. A conscientious trade association should not be satisfied with remaining strictly "within the law", merely seeing to it that its acts do not become the object of prosecution. Such an attitude would not result in the full discharge of its public responsibility.

In the case of the Retail Merchants' Association of Canada, we have a nationally-known group which has on many occasions

rendered immense services to the Canadian community. We believe it will continue to do so. However, in the light of the facts disclosed during this investigation, we think that the General Executive should make clear to the provincial or local boards that the policy of the Association is and must be to discourage any incursion into the field of illegal restrictive practices. Any activities of this kind on the part of provincial boards are certain to reflect unfavourably, in the mind of the public, on the whole organization. In any event, they defeat the very purposes which motivated the formation of the Association.

## CHAPTER XI

### REMEDIES

In its report to the Minister of Justice, dated March 8, 1952, the Committee to Study Combines Legislation, in referring to the nature and contents of the reports to be made by the Restrictive Trade Practices Commission, said, inter alia, at page 34:

"We do not think the report should recommend prosecution or non-prosecution. This should be left to the Minister's decision on the basis of the report and such advice as he may seek. We consider that the report has important functions other than that of furnishing a preliminary verdict as to whether or not the accused shall be prosecuted."

We take it, therefore, that, although the text of the Act does not impose any restriction upon the Commission, it is not expected to recommend prosecution either under the Combines Investigation Act or under the Criminal Code, unless very special reasons exist for doing so. With this in mind, we now set forth the remedies which we suggest might be adopted in the public interest for the purpose of effectively preventing the continuance, repetition or extension of the restrictive arrangements and agreements discussed in this report.

The restrictive arrangements which were entered into, and which have been described earlier in this report, were fully effective to change the markup structure on the retail sale of gasoline from a 5 cents per gallon basis to a 20 per cent markup on the wholesale cost including tax. The 20 per cent markup was uniformly effective in July, 1951, and was still in operation at the time of the hearing. It will probably continue, notwithstanding condemnation of the methods by which it was established. Unless specific control of the trade be resumed by superior authorities having jurisdiction in the matter, the price of gasoline will probably continue to be set according to the 20 per cent markup secured by means of the aforesaid arrangements and practices. Even penalties could not, of themselves, undo what has been done. It thus becomes a matter of particular importance for the future to prevent a recurrence of similar arrangements and practices, and, in so doing, to create conditions under which we may expect that competition will be restored in the retail distribution and sale of gasoline in the Greater Vancouver area.

Referring again to the report of the Committee to Study Combines Legislation, we note that it contains a recommendation that the Combines Investigation Act be amended to provide for restraining orders which may be used, not only to prevent the commission of actual offences, but also to halt illegal arrangements in their formative stages. Section 31 of the Combines Investigation Act was enacted by 1952, c. 39, s.3, in pursuance of this recommendation. The first two paragraphs thereof read as follows:

"31. (1) Where a person has been convicted of an offence under section thirty-two or thirty-four of this Act or under section four hundred and ninety-eight or four hundred and ninety-eight A of the Criminal Code

- (a) the court may at the time of such conviction, on the application of the Attorney General of Canada or the attorney general of the province, or
- (b) a superior court of criminal jurisdiction in the province may at any time within three years thereafter, upon proceedings commenced by information of the Attorney General of Canada or the attorney general of the province for the purposes of this section, and in addition to any other penalty imposed on the person convicted, prohibit the continuation or repetition of the offence or the doing of any act or thing by the person convicted or any other person directed towards the continuation or repetition of the offence and where the conviction is with respect to the formation or operation of a merger, trust or monopoly, direct the person convicted or any other person to do such acts or things as may be necessary to dissolve the merger, trust or monopoly in such manner as the court directs,

(2) Where it appears to a superior court of criminal jurisdiction in proceedings commenced by information of the Attorney General of Canada or the attorney general of the province for the purposes of this section that a person is about to do or is likely to do any act or thing constituting or directed towards the commission of an offence under section thirty-two or thirty-four of this Act or section four hundred and ninety-eight or four hundred and ninety-eight A of the Criminal Code, the court may prohibit the commission of the offence or the doing of any act or thing by that person or any other person constituting or directed towards the commission of such an offence."

In our opinion the present case is appropriate for obtaining a judicial restraining order, to be executed under the directions

of the Court. The restrictive trade arrangements, agreements and practices involved in this case date only from 1951, but they were accorded unanimous adherence through the activities, first, of the Retail Merchants' Association of Canada, and, subsequently, of the Automotive Retailers Association. The continued existence of the Automotive Retailers Association as an active trade association points to the possibility of repetition of objectionable arrangements and to the need for measures that will prevent the parties concerned from discussing matters of price or from entering into improper agreements such as those we have been discussing, or that will make it impracticable and dangerous for them to do so, and therefore unlikely.

The evidence indicates that the unincorporated Automotive Retailers Association was used as the clearing house for the exchange of opinions, data, and other information, between the persons concerned in the aforesaid arrangements. It was the main instrument used in the promotion and carrying out of the arrangements which secured unanimity and uniformity of action. Its successor, the incorporated Association, stepped into its shoes and would now be available, if its members saw fit, to act as an agent for further monopolistic or anti-competitive activities.

It is extremely doubtful, however, that in the present state of our law its dissolution as a corporation could be decreed, so as to prevent its participation in future activities similar to those described in the present report. This is, of course, a strictly legal question outside the scope of matters within the functions of this Commission. If dissolution is not feasible, the Association should be judicially restrained, together with its directors, officers and members, from engaging in any activities relating to the restrictive arrangements disclosed herein, or which may assist in the further carrying out or extension thereof. The Association, its directors, officers and members should be enjoined from discussing at any meeting the price of gasoline, markup, common profits or any question likely to interfere with the free individual determination of resale prices, and with other factors which make for genuine free competition. The corporation, its directors, officers and members should further be enjoined from collecting, exchanging, distributing, circulating or in any way making available to members or to non-members figures and data relating to prices, markups, standard profits or related matters. The injunction should also be directed to all of the parties found herein to have been parties or privy to the objectionable arrangements. All these persons should be enjoined and restrained from meeting with each other, or in groups, or with or through the Automotive Retailers Association, for the purpose of discussing or agreeing on prices, markups or related matters. The persons found to have participated actively in the restrictive arrangements and practices herein described, either as members of the original Steering Committee, or of the several district committees or of the Central Council of the Automotive Retailers Association should

perhaps even be enjoined from further participating in any of the activities of the present Automotive Retailers Association, at least as directors or executive officers thereof.

The Retail Merchants' Association of Canada should also, in our opinion, be added as a party to the restraining order, if such a procedure should be decided upon by the proper authorities. As we saw in the foregoing chapter relating to the respective participation of the various parties in the restrictive arrangements under study, the Retail Merchants' Association of Canada, through its British Columbia Board, through Mr. George R. Matthews, the General Manager thereof, and through the trade section known as the Automotive Division, participated in the formation, both of the Automotive Retailers Association, and of the restrictive arrangements which that Association was intended to carry out. We appreciate that the naming of a well-known national body as a party to a restraining order, concerned with the cessation of a purely regional state of affairs, is a serious matter. It may well be that no officers of the national organization superior to Mr. George R. Matthews were aware of the activities described in the present report or authorized or approved of them. However, the single personality of the organization as a body politic, and the lack of corporate entity of the branches, appears to leave no alternative but to impose the final liability under such a restraining order upon the Association as a whole, the only legal entity.

(Sgd.) C. R. Smith

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Chairman

(Sgd.) Guy Favreau

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Member

Ottawa,  
February 16, 1954.

## APPENDIX I

### Rulings on Preliminary Objections as to Jurisdiction

This matter came on for hearing before the Restrictive Trade Practices Commission on the 27th day of March, 1953, in the Law Courts Building in the City of Vancouver, British Columbia.

At the outset, Counsel appearing for the several persons and corporations named in allegations contained in the statement of evidence presented by the Director of Investigation and Research to the Commission, under Subsection (1) of Section 18 of the Combines Investigation Act, raised a number of preliminary objections to the jurisdiction of this Commission to proceed with the hearing. Following the completion of argument on these objections, the Commission reserved its decision. Counsel for all parties then agreed to proceed with argument on the merits, without prejudice to any rights they might have under these preliminary objections.

The members of the Commission then advised Counsel that, if the Commission should rule against these objections in whole or in part, they would so advise Counsel for all parties, before proceeding to prepare the Commission's report to the Minister.

The Commission has given careful consideration to each of the objections raised. Its rulings on each objection will be found hereunder. The objections may be summarized as follows:

#### First Objection

All of the evidence in the investigation was taken before one J. J. Quinlan, but the statement of evidence was made and signed by one T. D. MacDonald, the Commissioner of the Combines Investigation Act. Mr. MacDonald did not conduct the investigation himself, and therefore could not validly make or sign the statement of evidence. Further, no written authority has been shown for Mr. J. J. Quinlan to hold the investigation.

#### Second Objection

The investigation was stated from the outset to be

concerned with the distribution and sale of gasoline in the Vancouver area. However, the statement of evidence, at pp. 32 et seq., deals with the question of an alleged wholesaler-retailer combine concerning the sale and distribution of automotive parts and accessories to consumers. Mr. Quinlan had no authority to extend the scope of the inquiry or to investigate this question. Again, since the witnesses were required to testify before Mr. Quinlan as to "the distribution and sale of gasoline", and, since there appears to be no connection between the facts disclosed by the statement of evidence relating to parts and accessories and those relating to gasoline, the Commissioner had no right to make allegations in respect of parts and accessories, such as are found on pp. 32, 37 and 38 of the statement of evidence.

### Third Objection

Under Section 18 of the Combines Investigation Act as amended, proceedings before this Commission are to be commenced by the Director of Investigation and Research submitting to the Commission a "statement of the evidence" obtained in the inquiry. For transitional cases the rule is the same, under Subsection (4) of Section 10 of Chapter 39 of the Statutes of Canada, 1952. The document entitled, "General Statement", submitted by the Commissioner (now the Director of Investigation and Research) in this inquiry, is not such a statement of the evidence as is contemplated by the Act. The Director should have confined the statement to a simple presentation of the evidence, leaving to the Commission the duty of analyzing the evidence and drawing conclusions therefrom. Instead, the Director discussed and analyzed the evidence, drew conclusions therefrom both of fact and law, and formulated charges which legally could have been contained only in a report. This method, followed by the Director, meant that the document entitled, "General Statement", was in reality a report, and was in effect a prosecutor's indictment. It meant also that the separation of the functions of the Director and the Commission, established by the amending legislation of 1952, was disregarded, and that the position of parties against whom allegations were made was seriously prejudiced before this Commission.

### Fourth Objection

The Director could not submit this report to the Commission, with the allegations contained in it, without previously having notified each of the parties against whom any allegations were to be made, and having given each of them full opportunity to be heard before him, personally or by counsel, as provided for by Section 13 of the Inquiries Act, R.S.C. 1927, ch. 99.

#### Fifth Objection

Since this investigation was commenced before the amending legislation of 1952, it could only be brought before this Commission in accordance with the transitional provisions of Section 10 of Chapter 39 of the Statutes of Canada, 1952. Subsection (4) of said Section 10 states that the Commissioner of the Combines Investigation Act may, instead of making a report (to the Minister) as therein provided, prepare a statement of evidence and submit it to the Restrictive Trade Practices Commission. The Commissioner (now the Director) is thus given two alternative courses of action, but the words, "instead of", mean that the second course of action is strictly in substitution for the first. Therefore the Commissioner is not empowered to submit a statement of evidence to the Restrictive Trade Practices Commission unless he is already in a position to make a report to the Minister. This he was not in a position to do in this case, as the persons against whom allegations were intended to be made had not been given full opportunity to be heard, as required by Section 13 of the Inquiries Act. Consequently, the Commissioner had no power to submit any statement of evidence to this Commission.

#### Sixth Objection

The statement of evidence is objectionable in that it discloses the names of some of the witnesses who appeared during the course of the investigation and quotes portions of their evidence. Such disclosure violates the established principle of secrecy of the proceedings before the Commissioner.

#### Seventh Objection

The transcript of the evidence gathered by the Commissioner in the course of the investigation forms no part of the record before the Commission. The Commission has, therefore, deprived itself of jurisdiction by reading the transcript. Even if Subsection (3) of Section 18 of the Act as amended does permit the Commission to read the transcript of evidence, the Commission may not read it prior to the Commission hearing under said Section 18.

#### Eighth Objection

No adverse report may be made against Mr. George R. Matthews, chief executive officer of the Retail Merchants' Association of Canada. He was not heard by the Commissioner or Mr. Quinlan. By reason of ill health, he is presently not physically able to appear before the Commission. Therefore, it cannot be said that he

has been given "full opportunity to be heard" within the meaning of Section 18 of the Combines Investigation Act or Section 13 of the Inquiries Act. Similarly, no adverse report may be made against the Retail Merchants' Association of Canada, because at all material times the said George R. Matthews has been in complete charge of the administration of the Association, and is the only witness able to speak with authority for the Association. He is the only witness able to give a full and proper explanation of the role played by the Association in the matters now before the Commission.

### Ninth Objection

The evidence of Mr. Edward R. Bence, Marketing Manager of the Standard Oil Company of British Columbia Limited, was taken illegally before Mr. Quinlan, because the subpoena summoning him to appear was not delivered to him until the day following that of his appearance before Mr. Quinlan, and he had received no other notice previous to his appearance.

The Commission will now deal with each of these objections separately. The expressions, "the Act", and "the Combines Investigation Act", will refer to the Combines Investigation Act, R.S.C. 1927, ch.26, and amendments thereto prior to Chapter 39 of the Statutes of Canada, 1952, which created the Restrictive Trade Practices Commission. The expressions, "new Act", and, "new Combines Investigation Act", will refer to the Combines Investigation Act as amended by Chapter 39, S.C. 1952.

### First Objection

This objection resolves itself into two propositions, viz.:

Proposition (a): The Commissioner had no power to repare and sign a statement of evidence on the basis of evidence obtained by and given before another person.

Proposition (b): No document was filed authorizing J. J. Quinlan to conduct the inquiry.

### Proposition (a)

Section 8(2) of the Act empowers the Commissioner to authorize or depute "any technical or special assistant or other qualified person employed under this Act" to "inquire into any matter within the scope of this Act as may be directed by the Commissioner".

Section 22(1) states that "the Commissioner may order that any person . . . be examined upon oath before . . . the Commissioner or . . . any other person named for the purpose by the order of the Commissioner".

Subsection (2) of said Section 22 states: "Any person summoned before the Commissioner shall be competent and may be compelled to give evidence as a witness."

It cannot have been intended by Parliament that a witness appearing before the Commissioner would be in a different position than one appearing before "any other person named for the purpose". It seems clear, therefore, from the language of said Subsection (2) that a hearing before "any other person named for the purpose" is deemed to be a hearing before the Commissioner.

Again, the language of Section 12 of the Act, which provides that the Commissioner shall "cause an inquiry to be made into all such matters as he considers necessary to inquiry into . . .", shows clearly that the Commissioner was not expected to conduct all the inquiries personally.

Further, it must be remembered that the Commissioner was appointed for and had jurisdiction to conduct investigations in the whole of Canada, simultaneously if necessary. To enable him to pursue his investigations efficiently, various methods of obtaining evidence were put at his disposal, e.g., the requiring of written returns under oath, the delegation of power to enter premises and examine documents found therein, power to call for the production of documents and to make copies thereof, power to require witnesses to appear before him or give evidence before another person. Clearly, it was the intention of Parliament that, no matter which method or methods were followed, the investigation should be deemed to be an investigation conducted by the Commissioner.

Once the investigation was concluded, whether conducted by the Commissioner personally or through delegation to another person, Subsection (1) of Section 27 of the Act required the Commissioner to make a report to the Minister. The obligation to make a report was imposed on the Commissioner himself, not on any person through whom he had conducted the investigation or any part of it.

Any other interpretation of the statutory provisions would defeat the purpose of the Act and fail to apply the "golden rule" of interpretation stated in Section 15 of the Interpretation Act, R. C. S. 1927, ch. 1.

Proposition (b)

It must be borne in mind that Mr. Quinlan was at all times material to this investigation a Combines Investigation Officer on the permanent staff of the Commissioner. He was not a temporary, technical or special assistant employed by the Commissioner under Subsection (1) of Section 8 of the Act, but a permanent civil servant carrying out his regular duties. It was his duty to carry on investigations as directed by the Commissioner. There was nothing in the Act requiring that the Commissioner's orders or directions be given to him in writing or in any formal manner. All that was necessary, under Subsection (2) of Section 8, was that he be authorized or deputed by the Commissioner to make the investigation.

It was argued that the authority given to Mr. Quinlan should have been in writing so that the persons summoned and their Counsel might know just what he was to investigate and how far his authority extended. The Commission is of the opinion that the summons served on each witness sufficiently described the nature of the investigation. An examination of this document, a copy of which was filed before the Commission as Exhibit H1, shows also that it may properly be regarded as setting out in writing the authority deputed to Mr. Quinlan by the Commissioner to hold the inquiry.

The document is entitled:

"In the matter of a preliminary inquiry under the Combines Investigation Act relating to the distribution and sale of gasoline".

A copy of the summons was addressed to each person summoned, and was signed by the Commissioner. The body of the summons read in part as follows:

"Pursuant to authority conferred by and under the Combines Investigation Act, you are hereby required to attend before Mr. J. J. Quinlan, Combines Investigation Officer, at Salon E, Hotel Vancouver, Vancouver, British Columbia . . . to give evidence upon oath in connection with the above investigation.

Further you are required to bring with you and to produce to the said J. J. Quinlan all books, papers and records in your possession or under your control relating to The Automotive Retailers' Association."

Bearing in mind that Mr. Quinlan was a permanent member of the Commissioner's staff, and that he was described in the summons as a Combines Investigation Officer, there is no

doubt in the minds of the Commission that the Commissioner, in telling witnesses to appear before Mr. J. J. Quinlan for the purposes stated in the summons, was thereby necessarily authorizing Mr. Quinlan to hold the hearings. It can scarcely be imagined that the Commissioner would order witnesses, under penalties of the law, to appear before Mr. Quinlan to give evidence upon oath, without at the same time necessarily indicating that Mr. Quinlan was authorized to hear the evidence.

The summons was in exact conformity with the provisions of Subsection (1) of Section 22 of the Act. Nothing further was required by the statute.

It may be argued that it would be better practice for a written order to be issued appointing the hearing officer, separate and distinct from the summons ordering witnesses to appear. Even if this argument were accepted, the fact that both the summons to the witness and the authority of the hearing officer were contained in the same document would not vitiate the proceedings. At most, it would merely raise a highly technical point, and would be disposed of by Section 3 of the Act, under which no proceedings are to be deemed invalid by reason of any defect of form or any technical irregularity.

For the foregoing reasons the Commission does not accept the first objection.

### Second Objection

Counsel for the persons named in the Commissioner's allegations all objected to this Commission dealing with the second part of the statement of evidence, beginning at page 32 thereof. They contended that the scope of the investigation had been expressly limited from the outset to an inquiry into "the distribution and sale of gasoline", that the orders summoning the witnesses had so stated, that Mr. Quinlan had no right or authority to extend the scope of the inquiry to include questions concerning the distribution and sale of "automotive parts and accessories", and that this Commission could not make a report on that subject.

At the hearing Counsel for the Director (Commissioner) agreed that in this case those portions of the statement of evidence dealing with "automotive parts and accessories" should be treated as supporting material for the evidence concerning the inquiry into "gasoline".

Without attempting to formulate an interpretation of the Act for the purpose of determining the principle involved in this question, the Commission feels that, in fairness to the persons concerned, no report should be made to the Minister in this particular case, with

respect to parts and accessories, unless it is found that there is a necessary connection between that matter and the distribution and sale of gasoline. In other words, no report should be made on the question of parts and accessories as a subject of investigation. The report may, however, properly deal with parts and accessories to the extent that the evidence on this subject supports the allegation that a combine has existed or exists in the Vancouver Area, in relation to the distribution and sale of gasoline.

The second objection is upheld in part as indicated above.

### Third Objection

This objection contends that, because it contains conclusions as to the participation of the persons named therein in the commission of certain alleged infringements of the Combines Investigation Act, the document entitled "Statement of Evidence" is not a statement of evidence in accordance with Section 18(1) of the new Act, but rather a report within the meaning of the former Act such as the Commissioner was previously called upon to present. In consequence, it is argued that this Commission, not being furnished with such a statement, has no jurisdiction to entertain the present proceedings and make a report to the Minister of Justice.

The Commission is of the opinion that the facts that the Director's statement analyzes the evidence obtained in the course of the investigation, and states the Director's opinion as to the participation of certain persons in the creation of a situation contrary to the Act, do not alter the character of "statement of the evidence" provided for in said Section 18 of the new Act. In this respect, Section 10(4) of the transitional provisions and also Subsections (1) (b) and (2) of Section 18 must be referred to.

Each of these three provisions refers to the person or persons against whom an "allegation" has been made in the "statement of the evidence". The legislation clearly intends that the "statement of the evidence" may contain allegations. In Webster's New International Dictionary, under the word, "allegation", the following definition is given: "Law, a statement by a party of what he undertakes to prove; usually applied to each separate averment." The following definition is also found in the Century Dictionary and Encyclopedia, Vol. I: "In law: (a) The assertion or statement of a party to a suit or other proceeding, civil or criminal, which he undertakes to prove."

The Commission does not believe that, for legal purposes, any distinction may be drawn between formulating a specific proposition as to what is intended to be proven, on the one hand, and, on the other, as was done here, reciting evidence, and then stating as a

conclusion what the Director suggests the Commission should accept as a due proposition. In proceedings such as these, which are simply an inquiry by an administrative body, not only is it proper and customary to disregard strict legal technicalities, but, under the Act, both as it stood before the amendments of 1952 and as it stands today, Section 3 specifically provides that no proceedings under the Act shall be deemed invalid by reason of any defect of form or any technical irregularity. In this case, whether they are termed "conclusions" or "propositions", the averments made by the Director are, in our opinion, allegations and nothing else; the Commission is not bound thereby and only the Commission will ultimately be called upon to decide what is to be reported.

It is difficult for the Director, in framing allegations, to avoid altogether the appearance of trespassing upon the field of appraisal which has been assigned by the new Act to this Commission. However, such trespassing is apparent rather than real. The "statement of evidence" is, under Subsections (2) and (3) of Section 18 of the new Act, simply part of the case brought before the Commission. It must be appraised by the Commission, together with any evidence given and arguments submitted by or on behalf of persons against whom allegations are made, argument submitted by or on behalf of the Director, and such further or other evidence or material as the Commission considers advisable. The Commission holds that for all essential purposes the distinction of functions between the Director and the Commission has been maintained in this instance, the appraisal and reporting function remaining fully in the hands of the Commission.

But, it is further argued, when the Act says that any person against whom an allegation is made shall be submitted a copy of the statement of the evidence, the allegations there referred to are such implications, accusations or charges of misconduct as may have been made by witnesses in their respective testimony before the Commissioner, but this reference does not entitle the Commissioner or the Director to himself prefer any charge by way of specific allegations in his statement.

Again, the three provisions above referred to contradict this argument. Section 10(4) of the transitional provisions of Chapter 39, 1952, in referring to the statement of evidence, states that it must be submitted "to each person against whom an allegation is made therein". Section 18(1)(b) of the new Act also, referring to the "statement of the evidence", speaks of the "allegation . . . made therein". Section 18(2) of the new Act illustrates and clearly defines the meaning of the word "therein" found in the two other provisions, in speaking of "an allegation . . . made in such statement".

The document presented to this Commission by the former Commissioner, therefore, complies fully, not only with the spirit of the Act, but with its very letter: (a) it contains the statement

of the evidence on which the Commissioner has formed "the opinion that [it] discloses a situation contrary to . . . this Act"; (b) it contains allegations against precise persons; (c) it has been submitted to each of the persons concerned, before the date of the hearing before this Commission.

To argue that, because the "statement of evidence" contains allegations against certain persons, it is in effect a prosecutor's indictment, and that, as a result thereof, those persons have been seriously prejudiced before this Commission, seems to the Commission to misunderstand the purpose of the new Act and the results that may be expected to flow from allegations contained in the statement. As the new Act specifically contemplates that the "statement of evidence" may contain allegations, and provides that any persons against whom such allegations are made must be given full opportunity to be heard by the Commission, it is clear that in one respect at least the "statement of evidence" is intended to bear the same relationship to the proceedings before this Commission as an indictment bears to a criminal trial. Just as an indictment tells an accused person the offences with which he is charged, so the "statement of evidence" alleges that certain persons are responsible for the existence of specific situations contrary to the Act. Surely knowledge of what is alleged against them puts these persons in a better position to marshal both evidence and argument in their own behalf. On this count the allegations are advantageous rather than prejudicial to them. It must further be remembered that the "statement of evidence" is not a public document. Only persons directly concerned with the inquiry have access to it. If any prejudice flows from its issue, that prejudice must lie within the ranks of those against whom allegations are made. Prejudice in that sense can scarcely be considered a valid objection to the allegations. It is very difficult to imagine how it could be avoided.

The third objection is not accepted by the Commission.

#### Fourth Objection

This objection alleges an obligation on the part of the Commissioner to notify each of the parties against whom he intended to make an allegation before this Commission, and give them a full opportunity to be heard before doing so. We are of the opinion that this is not borne out by the Act as amended.

Section 13 of the Inquiries Act, which was incorporated into the Combines Investigation Act by Section 18 thereof as it stood before the last amendments, only applies to a person who is about to make the ultimate report as such, as provided for by whatever Act or Regulation authorizes the report. If he had elected to proceed with a report to the Minister under Section 10(1) of the transitional

provisions, there is no doubt that the Commissioner could not have done so before giving each of the parties concerned notice of the intended allegations and full opportunity to be heard before him, personally or by counsel, in connection therewith.

In exercising the option given him by said Section 10, Subsection (4), the Commissioner of the Combines Investigation Act thereby decided that he would not make a report and that any report in the matter would be made by this Commission. He thereby automatically placed himself outside the scope of application of said Section 13 of the Inquiries Act. The effect of his option was that, the function of making a report becoming incumbent upon this Commission from then on, it was then this Commission which was legally prohibited from making a report to the Minister before having given the parties mentioned in the allegations of the statement of evidence full opportunity to be heard.

As a matter of fact, the statement of evidence which the Commissioner elected to make to the Commission is, by Section 10 (4) of the transitional provisions, "deemed to be a statement submitted to the Commission pursuant to subsection one of section eighteen of the said Act as enacted by this Act". There is nothing, either in said Section 18(1) or in any other provision of the new Act, which indicates that the statement of the evidence shall be deemed to be a report or that no allegations may be made therein by the Commissioner before the Commissioner has called upon the parties concerned to defend themselves before him.

The statutory intention is quite contrary to such a view. Where a statement of evidence is employed, the law, by Subsection (4) of Section 18 of the new Act, has clearly transferred from the Commissioner to the Commission itself the obligation to "allow full opportunity to be heard". Parliament has still more clearly shown its intention in this respect, by re-enacting former Section 18 as Section 21 of the new Act, taking great care to substitute the designation, "the Commission", for the former mention of "the Commissioner", thus making it clear that, when the Commission becomes obligated to make a report, the duty to give a full opportunity to be heard applies to this Commission and not to the Commissioner.

#### Fifth Objection

This objection rests upon an interpretation of Section 10(4) of the transitional provisions which in the opinion of this Commission, is too narrowly based and is contrary to the clearly apparent intention, of the transitional provisions as a whole.

The transitional provisions are contained in Section 10 of

the amending Act of 1952. This section lays down the procedure to be followed in investigations which were begun before the date when the new Act came into force but were in different stages of development and still in the hands of the Commissioner or special commissioner at that date. Subsections (1) and (4) deal with the situation that existed in this case. So far as relevant they read as follows:

"(1) Where, prior to the coming into force of this Act,

- (a) the Commissioner of the Combines Investigation Act had caused an inquiry or investigation to be made under the Combines Investigation Act,
- (b) no report had been made under subsection one of section twenty-seven of that Act, and
- (c) the Commissioner had exercised any of the powers conferred upon him by section twenty-two of that Act,

the inquiry or investigation may be continued and completed and report thereon may be made as though this Act had not been passed."

"(4) In the case of an inquiry or investigation referred to in subsection one . . . of this section, the Commissioner of the Combines Investigation Act . . . may, instead of making a report as therein provided, prepare a statement of evidence and submit it to the Restrictive Trade Practices Commission and to each person against whom an allegation is made therein, and for the purposes of the Combines Investigation Act, as amended by this Act, such statement shall be deemed to be a statement submitted to the Commission pursuant to subsection one of section eighteen of the said Act as enacted by this Act."

It is noted that the latter part of Subsection (1) says, in respect of the cases with which it deals:

"the inquiry or investigation may be continued and completed and report thereon may be made as though this Act had not been passed".

It is also noted that Subsection (4), in laying down the alternative procedure, makes no reference to the investigation being continued and completed, but simply states that the Commissioner "may, instead of making a report as therein [i.e., in Subsection (1)] provided, prepare a statement of evidence and submit it to the Restrictive Trade Practices Commission . . ."

The contention submitted to this Commission rests solely on the words "instead of" in Subsection (4) and, on the basis of this

phrase, it is advanced that the alternative procedure, viz., the submission of a statement to this Commission, is in strict substitution for the making of a report by the Commissioner to the Minister, and that it is, therefore, not available unless the Commissioner is already in a position, if he should so choose, to make a report containing the allegations he intends to make in the statement of evidence.

The legal basis for this construction of the words "instead of" as found before the words "making a report", was not expressly explained to us. It would appear, however, that counsel's contention is that the reference to Subsection (1) of transitional Section 10 which appears in Subsection (4) thereof implies that the exercise of the option involving the statement to the Commission may only be made by the Commissioner after the latter has "continued and completed the inquiry or investigation".

This, if all the sections of the Act are to be soundly interpreted one in the light of the other, does not appear to represent a proper construction of Subsection (4). It must, indeed, be noted that said Subsection (4) considers the statement of evidence made in such a case as a statement within the meaning of Section 18 of the new Act. According to said Section 18, the statement of evidence may be presented by the Director to the Commission "at any stage of an inquiry". There would consequently appear to be no need for the Commission to ascertain whether or not, before making his statement, the Director (Commissioner) had completed his inquiry within any technical sense;

But, should it be rightly said that such is the meaning of Subsection (4) and that the latter, in conjunction with Subsection (1), should be read as stating that the inquiry or investigation may be continued and completed and that then only, instead of making a report, the Director may submit a statement to the Commission, it would be incumbent upon counsel formulating the objection to show that the reference to completing the inquiry or investigation includes a reference to an obligation on the part of the Director (Commissioner) to allow all parties concerned full opportunity to be heard in person or by counsel before him. Such a contention should fail.

In this respect we believe that the matter is fully disposed of in our foregoing discussion of the fourth objection where it has been explained how, both under the transitional provisions and otherwise, only the person or the body called upon to report to the Minister is under the particular obligation to allow the parties a full hearing personally or by counsel. In other words, under the Combines Investigation Act as under the Inquiries Act, the obligation to allow the parties to be heard is a condition precedent to the exercise of the power to report rather than a last step in the investigation. The inquiry or investigation as such, i.e., the obtaining of all the facts relevant to the issue under consideration, is statutorily under the

full and exclusive responsibility of the duly appointed Commissioner and could certainly not be said to be left, in whole or in part, to the discretion of third parties. If, therefore, the hearing to be allowed before making the report were intended to form an essential part of the investigation, this would mean that the facts in possession of the persons so allowed to be heard must form part of the data to be obtained by the Commissioner and, in such a case, the latter would be forced to order the appearance before him of whomever he intends to make an allegation against. But this is not what is said either by the Combines Investigation Act or the Inquiries Act. These statutes only provide for the Commissioner, before making an adverse report, offering the said parties an opportunity to be heard. Should the latter elect not to accept the opportunity, no other requirement stands in the way of making a report. It is clear that the requirement to afford an opportunity to be heard is designed for the protection of third parties in the making of a report and is not a requirement in the investigation as distinct from the report. Even if this hearing of the parties might produce additional information, the step must be considered essentially as incidental to the function of reporting rather than incidental to that of investigating. Thus, referring to the very words and meaning of transitional Section 10(4) when the Commissioner elects to "prepare a statement of evidence and submit it to the Restrictive Trade Practices Commission, . . . instead of making a report", he automatically elects not to make a report and therefore chooses not to follow a course of action which would entail an obligation on his part to hear the parties.

The Commission is therefore convinced that in the cases to which Subsection (4) applies, Parliament clearly intended to give the Commissioner, in his discretion, two alternative methods of procedure, viz.:

- (1) He might complete the investigation, and report thereon to the Minister, as if the new Act had not been passed;
- (2) He might proceed with the investigation and, deciding not to report at the conclusion thereof, prepare a statement of evidence and submit it to this Commission in the way set out in Section 18 of the new Act which imposes on the Commission, and on the Commission alone, an obligation to allow a hearing to the parties implicated.

Furthermore, looking at the matter from a practical point of view, Parliament can scarcely have intended, in providing an alternative procedure for transitional cases, to impose additional and unnecessary burdens upon the conduct of the investigation, over and beyond those required either by the former Act or by the procedure under the new Act. Yet this is precisely what is involved in the argument supporting this fifth objection. Clearly the acceptance of this argument would mean that the Commissioner would be bound

to give everyone against whom he intended to make some allegation in the statement of evidence full opportunity to be heard in person or by counsel, and that after submission of the statement of evidence to this Commission, this body would be bound to give each of such persons a second full opportunity to be heard.

The Commission does not believe that Parliament had any such intention. Under the new Act the duty of providing a full opportunity to be heard has been transferred from the former Commissioner to the new Commission. The transitional provisions are intended simply to provide a choice of procedure, not to complicate the procedure.

The Commission's interpretation of the transitional provisions is strongly supported by the concluding words of said Subsection (4) of Section 10. This subsection, after providing the alternative of preparing and submitting a statement of evidence, proceeds to say: "and for the purposes of the Combines Investigation Act, as amended by this Act, such statement shall be deemed to be a statement submitted to the Commission pursuant to subsection one of section eighteen of the said Act as enacted by this Act". The Commission is of the opinion that this provision means that a statement of evidence submitted to the Commission under said Subsection (4) of Section 10 of the transitional provisions is placed on all fours with a statement of evidence submitted under Subsection (1) of Section 18 of the new Act, and that it may be submitted to the Commission under the same conditions as would apply if it were a statement of evidence submitted under said Subsection (1) of Section 18.

The Commission therefore does not approve the fifth objection.

#### Sixth Objection

BECAUSE, in the statement of evidence prepared by the Commissioner, some of the names of the witnesses who appeared before the hearing officer are referred to in quoting excerpts from their respective evidence, Counsel for the parties mentioned in the allegations contend that the statement is invalid and that, consequently, this Commission cannot hold a hearing thereon nor report accordingly. In support of their argument they invoke that, as the hearings must be in camera unless otherwise ordered, and as it was decided to hold them in camera in this case, the secrecy with which the proceedings should have been clothed throughout has been violated, and the purpose of the Act, therefore, defeated in this respect.

We do not believe that there is any substance in such a proposition or that the Act has been in any way contravened. The

purpose of holding the proceedings in camera and treating them as confidential until the report is made to the Minister has, in our opinion, nothing to do with the protection to be given to particular witnesses. The purpose of proceeding in camera is to protect business interests, including trade secrets, and to prevent damage being caused to any of the parties by the giving of publicity to the depositions of witnesses who give evidence during the course of the investigation, thus allowing the public to reach conclusions which might well not be supported by the evidence. The Commissioner himself also has some interest in the secrecy of proceedings, inasmuch as the divulging of the facts and evidence obtained in the course of a pending inquiry might, in some cases, hamper the continuation of the investigation by making it possible for unscrupulous persons to influence witnesses or dispose of documents in a way contrary to the public interest.

The protection of an informer or of a witness is an altogether different matter. It is concerned with the question whether the Commissioner, in certain cases, should decide not to use in any way, at any stage of the proceedings, the evidence of such informer, but should rely exclusively, for the purposes of a statement of evidence or of a report, on evidence obtained from other sources.

It was in the interest of the persons mentioned in the allegations of the Commissioner that they should be referred to the portions of the evidence on which the latter formed his opinion that a situation contrary to the Act had been disclosed, and that they should be informed as to the particular witnesses who had testified to that effect. This information must surely enable each of the interested parties to avail himself more fully of the benefit of Section 18(4) of the new Act, and, if deemed advisable, to call before the Commission at the hearing any of the witnesses who so testified in the course of the investigation, for the purposes of re-examination or cross-examination.

If, however, it should be deemed to be not completely fair to these witnesses to have their names mentioned in the statement of evidence, this would not be a matter for the persons charged in the allegations to raise, but for each of the said witnesses, individually, to object to on his own behalf. But surely, even then, the statement of evidence would still remain a statement as provided for by Section 18(1), and this Commission would still retain jurisdiction in the matter.

In any event, this matter cannot be termed one of substance or one which goes in any way to jurisdiction, inasmuch as secrecy is not essential to proceedings under the Act. Section 25 of the Act states that the proceedings shall be conducted in private, but adds that the Commissioner "may order that all or any portion . . . shall be conducted in public". A similar provision is contained as to

powers of this Commission in Section 28 of the new Act.

This sixth objection must, therefore, be set aside.

### Seventh Objection

The members of the Commission having read the transcript of the whole of the evidence taken before hearing officer J. J. Quinlan, and also the exhibits filed in the course of the investigation, counsel for the parties contend that the Commission has thereby deprived itself of all jurisdiction in the matter, and that the proceedings must, therefore, terminate.

Not only is there no prohibition in the Act preventing the Commission from reading the evidence taken during an investigation, in preparation for a formal hearing under Section 18 of the new Act, but it does, rather, appear that reading the transcript of evidence would normally be the proper procedure to follow, both in accordance with the text and spirit of the Act and in fairness to all concerned.

In view of the wording of Section 18(1) of the new Act, the statement of the evidence, may well contain only such of the facts as the Commissioner or Director thinks indicate a situation contrary to the Act. On the other hand, the Commission is under an obligation, before making a report, to comply with Section 18(4) and to give each of the parties liable to be affected full opportunity to be heard. This was done in the present case. Each of the persons mentioned in the Commissioner's allegations was allowed to tender before the Commission any evidence which he might deem expedient for a proper explanation of his respective position, and was offered the benefit of subpoenas to call any witnesses who might be reluctant to appear and whose testimony he might need either for examination or cross-examination.

In the circumstances, the reading by the Commission, of the whole of the evidence obtained by the Commissioner was necessary, in order to ascertain if there were circumstances which might give the facts an aspect different from that shown in the statement, circumstances which might well be entirely favourable to one or all of the said parties, and also to enable the Commission to know the background of any examination or cross-examination which might take place at the hearing, and to appraise correctly the relevancy or irrelevancy of any evidence tendered at the hearing. In this respect, it may be noted that one of the Counsel before us even complained that the statement of evidence seemed to be directed toward establishing misconduct and failed to quote parts of the evidence which might be favourable to some of the persons concerned.

Jurisdiction in the matter appears to be clearly given by

Section 18(3), which allows the Commission, after having received the statement and having fixed a date for hearing, to consider the said statement submitted by the Director "together with such further or other evidence or material as the Commission considers advisable".

It was then argued that even if the Commission had the right to read the balance of the evidence, it could not do so before the hearing. Now, in the light of what has just been said, this would appear to be both unfair and impractical. Furthermore, if one were to look very strictly at Section 18, as was proposed, for the purpose of deciding when the transcript might be read, the procedure adopted by the Commission would still appear to be the only proper one.

Subsection (1) calls for the preparation and submission of the statement of the evidence. Under Subsection (2), the Commission, after having received the statement, must fix a date at which all persons interested shall be allowed full opportunity to be heard in person or by counsel before the Commission. Under Subsection (3), the Commission must consider the statement and all other evidence or material deemed advisable. It is only by Subsection (4), that is, at the fourth step, that the new Act prohibits the making of a report to the Minister without the Commission having given to the persons concerned full opportunity to be heard.

Looking at the question from another point of view, it must be noted that the only thing which the Commission is prohibited from doing before a hearing or before giving parties an opportunity to be heard, is not the reading of the evidence or the persual of the exhibits, but simply and solely the making of a report.

A further logical argument is found in an examination of the new Act, which clearly establishes that, not only is it not improper for this Commission to read the evidence obtained in the course of an investigation, but that the legislature intended that this should be its very proper function.

Under the new Act, which, as far as the appraisal powers of the Commission are concerned, applies to this case, whenever a hearing takes place, the Commission will necessarily be conversant with the whole of the evidence and in possession of the record thereof. As a matter of fact, under Section 17 of the new Act, the regular procedure is for all witnesses to testify and file documents before a member of this Commission. The witnesses may be called by a member of the Commission, either on his own motion or on the ex parte application of the Director. As for the Director's power to enter premises in order to seize exhibits or other articles, and his power to call for written returns of information on oath and for evidence by affidavit, these powers may only be exercised, under Sections 9, 10 and 12 of the new Act, with leave of a member of the Commission and upon his certificate that such steps may properly be

taken. There would therefore appear to be no ground for objecting to the Commission reading the evidence either at all, or prior to the hearing.

For the aforesaid reasons, this seventh objection is not approved by the Commission.

#### Eighth Objection

Both in the name of Mr. George R. Matthews and in the name of the Retail Merchants' Association, an objection was made to the jurisdiction of this Commission, on the ground that Mr. George R. Matthews, the Chief Executive Officer of the said association had not been heard before the Commissioner or his delegate and that, in view of the fact that he is not now available because of ill health, the said George R. Matthews cannot be given a full opportunity to be heard within the meaning of Section 18(4) of the new Act.

For the purpose of dealing with this objection, the status of Mr. Matthews and that of the Retail Merchants' Association must be discussed separately.

##### (a) Mr. George R. Matthews

In the first place the Commission does not believe it to be a valid ground of objection that any of the parties against whom allegations are made in the Commissioner's statement has not been heard before the latter in the course of the investigation. Evidence may be obtained in any valid form and from any competent witness. The Director is not required to hear what a particular person has to say, before making allegations against him in his statement of evidence. He may rely entirely on evidence obtained from other sources. The right of a person to be heard arises, not in the course of the investigation by the Director, but at the stage of the hearing before this Commission.

In consequence, Mr. George R. Matthews cannot validly complain on the ground that he was not called as a witness by the Commissioner before hearing officer J. J. Quinlan; but, now that an allegation has been made against him in the statement of evidence before this Commission, he may rightly object to our making an adverse report to the Minister concerning him, if it is true to say that he has not been given full opportunity to be heard, within the meaning of Section 18(4) of the new Act.

In examining the question whether or not Mr. Matthews has been given full opportunity to be heard before this Commission, let us first note that Subsection (4) of Section 18 states that the

"opportunity to be heard" with which we are concerned here is "as provided in subsection two". At the end of Subsection (2) of Section 18, the expression "full opportunity to be heard" is clarified by the addition of the words "in person or by counsel".

In view of the fact that this Commission, even if it is expected to proceed in a quasi-judicial fashion, is nevertheless an administrative tribunal, with no power to make a decision, binding upon the parties, the report which may be made under Section 19(1) of the new Act cannot be said to be a judgment. It must be limited to appraising the effect on the public interest of arrangements and practices disclosed in the evidence tendered before the Commission and also to making certain recommendations to the Minister. These recommendations may or may not be followed by the Crown. When this Commission was being established it was expedient, as in all administrative matters, that the legislature should set up machinery which, although offering all parties concerned the greatest measure of security, would not defeat the very purpose for which that machinery was established, by allowing a variety of circumstances to hamper the work of the Commission. It was therefore only normal that the legislature should provide for a full hearing, not necessarily in the presence of the person concerned, but at least in the presence of the latter's counsel.

In the present case, Mr. George R. Matthews was given, by notice of this hearing sent to him three months previous to the date of the hearing, a full opportunity to be heard either personally or by counsel. As a matter of fact, he was very ably represented by Counsel before this Commission. Consequently, we believe that, strictly speaking, this objection to our jurisdiction is not substantiated by the Act.

Even if Section 18(2) can be interpreted as requiring the Commission to give a person a full opportunity to be heard in person in any circumstance, so that the words "or by counsel" may be said to represent only an alternative left to the exclusive option of that person, we still believe that the Act has been complied with in the present case with respect to Mr. George R. Matthews. To appreciate Mr. Matthews' status in this respect, the whole of the record, including the correspondence between Mr. Matthews' Counsel and the Commission, must be referred to.

The original date set by the Commission for the hearing in the present case was that of February 3, 1953, in accordance with the notice given to all the parties on December 30, 1952. As early as January 13, 1953, Mr. George R. Matthews had retained Counsel and both he and his attorney had decided that he would be represented by the latter before the Commission. It was Mr. Matthews' Counsel who asked for a postponement "for at least two months in order to enable Counsel to prepare a proper case" (Mr. Norris' letter to the

Chairman, January 13, 1953). In this letter there was no suggestion that Mr. Matthews might experience any difficulty in appearing before us, but the postponement was requested on the ground that at least two months' additional time was required in order that Counsel might be properly instructed and the case prepared. As a consequence, and also at the request of other Counsel, the date of the hearing was subsequently set back to March 26, 1953, i. e. nearly two months later.

The doctor's certificate which has been filed at the hearing as Exhibit H2 is dated March 21, 1953. Therein, Dr. MacPherson states that, in December 1952, he advised Mr. Matthews to cease all business activity and obtain a complete rest. He adds, however, that Mr. Matthews felt that his work still required at least the partial attention which he could give to it. He states, that as a result, Mr. Matthews' condition progressively deteriorated "and he has almost reached a stage of mental exhaustion". Therefore, on the said date of March 21, 1953, the doctor reports having requested his client to take a vacation and rest and then goes on to say that, for Mr. Matthews "even the strain of instructing Counsel would be extremely injurious to his health". True, Mr. Matthews' present situation is one which calls for sympathy and understanding. However, if a fair and proper meaning is accorded to Section 18(2) of the new Act, the conclusion cannot be avoided that, at the time when he received notice of hearing and during the period covering the postponement requested by him, if Mr. Matthews was in a position to give his work at least partial attention, he could then have taken time to fully instruct Counsel; and that as a result it must be said that "full opportunity to be heard" has been given to him by this Commission. If he cannot now avail himself of the full benefits of opportunity afforded him, we do not believe that this is a sufficient reason to prevent this Commission from reporting to the Minister, either favourably or adversely as the case may be.

In any event, we do not believe that this objection goes to jurisdiction. At most it might give some basis for a demand for a further postponement. No such request has been made on behalf of Mr. Matthews and no request has ever been made to the Commission to hear Mr. Matthews, either at the Court House, at his office, or even at home. In fact it has never been stated to this Commission that Mr. Matthews desired to be heard. In other words, no attempt has been made by him or on his behalf to circumvent the possible present difficulty created by Mr. Matthews' state of health, so as to enable him to formulate his personal explanation to this Commission, if he really intended so to do.

Under these circumstances, and especially in view of the fact that the case for Mr. Matthews was fully and ably presented by his Counsel before this Commission, the Commission would not feel justified in withholding its report to the Minister on the ground of this objection.

The Commission is of the opinion that the above interpretation of the Act is that intended by Parliament and that under the circumstances it cannot be said to entail any real unfairness to Mr. Matthews.

Notwithstanding the conclusion to which it has come, and without prejudice thereto, if within three weeks from the date appearing on these rulings upon preliminary objections, the Commission is advised by Mr. Matthews or his Counsel, Mr. Norris, that Mr. Matthews is able to appear before the Commission and desires to do so, the Commission will fix an early date and a place at which he will be given a further opportunity to be heard in person.

(b) The Retail Merchants' Association

As far as the Retail Merchants' Association is concerned, the objection based on Mr. Matthews' alleged inability to appear personally seems to the Commission to be without substance.

The evidence on which the Commissioner formed the opinion which led to his making allegations before this Commission concerning the Retail Merchants' Association, was obtained from Mr. Kinneard. The latter, during the whole period covered by the investigation and at the time of the hearings before Mr. J. J. Quinlan, was the Retail Secretary of the Retail Merchants' Association and was therefore a competent witness and the question as to whether or not he was the most competent witness is not one which at all concerns or can now affect the jurisdiction of this Commission, but one which can only be considered in weighing the evidence and discussing it for the purpose of the Commission's report.

It is clear that the Retail Merchants' Association could not have forced the Commissioner either to call Mr. Matthews before Mr. Quinlan or to subpoena him to appear at the hearing before this Commission. The Commissioner had complete freedom to choose the witnesses from whom he thought evidence could be obtained. Whether, in so doing, he called upon the best possible witnesses or not, is an altogether different question and one for argument on the merits.

On the other hand, if the second aspect of the Retail Merchants' Association's contention were accepted and if it could be said that no report can now be made with respect to the Retail Merchants' Association because the latter cannot call its chief executive officer as a witness before the Commission, a dangerous situation would result. Taking by way of analogy, a criminal trial, where rules of procedure and evidence must be followed more strictly than before a Commission such as ours, this conclusion would mean that no verdict could be entered against a defendant corporation, as long as the latter could establish that any particular officer thereof

was either dead or unable to appear in person before the court for an indefinite period. This certainly is not a tenable position in law.

The Retail Merchants' Association is in possession of its own records and whatever explanation it had to offer could always be presented by its present proper officers or by other witnesses whom this Association might choose to bring before us.

The eighth objection, in consequence of the reasons given above, is not approved.

#### Ninth Objection

This Commission does not believe that there is substance in the argument that the subpoena for Mr. Bence, Marketing Manager for Standard Oil Company of British Columbia Limited, was delivered to him only on the day following his appearance before the hearing officer and that, consequently, this Commission cannot make a report either with respect to Mr. Bence or with respect to the company he was representing. It seems clear from the letter which accompanied the Commissioner's subpoena or order, which is signed by Mr. Douglas Brown, Counsel for the Commissioner, and which was filed before this Commission on behalf of Mr. Bence and of the Standard Oil Company as Exhibit H3, that Mr. Bence's appearance was voluntary. He evidently asked that the subpoena be remitted to him for his records and to ascertain or confirm Mr. Quinlan's jurisdiction to hold the hearing.

This practice is often followed; it is simply based on courtesy between parties. The fact that it was used here does not, in our opinion, affect the jurisdiction of this Commission to report to the Minister. Section 3 of the Act and of the new Act would, at all events, prevent the upholding of an objection based on such a technical ground.

This ninth objection is also subject to the answer that Mr. Bence did in fact appear and give evidence voluntarily, and it cannot now be objected that no order requiring him to appear and give evidence had previously been served upon him.

The ninth objection is therefore not approved by the Commission.

Dated at Ottawa, Ontario, this 6th day of July, 1953.

(SGD.) C. R. SMITH  
Chairman

(SGD.) GUY FAVREAU  
Member

# APPENDIX II

## Operating Ratios Service Stations

ITEMS	LESS THAN 20,000 POPULATION					
	Less than \$10,000	\$10,000 to \$20,000	\$20,000 to \$30,000	\$30,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$300,000
Number of Concerns .....	182	285	119	105	59	28
Cost of Goods Sold .....	75.8%	77.4%	76.5%	74.2%	75.3%	76.6%
EXPENSES:						
Salaries, Owners and Officers .....	11.9%	6.5%	8.3%	7.0%	4.6%	3.6%
Wages, All Other Employees .....	3.5	4.4	6.0	7.4	7.8	8.6
Occupancy Expense .....	3.9	3.7	4.1	4.0	2.8	2.9
Advertising .....	0.4	0.4	0.4	0.5	0.6	0.4
Bad Debt Losses .....	0.9	0.6	0.5	0.5	0.5	0.6
All Other Expense .....	1.4	1.7	2.4	4.3	5.3	4.2
TOTAL EXPENSE .....	22.0%	20.4%	21.7%	23.7%	21.6%	20.3%

GROSS MARGIN .....	24.2%	22.6%	23.5%	25.8%	24.7%	23.4%
NET PROFIT.....	2.2%	2.2%	1.8%	2.1%	3.1%	3.1%
Inventory Turnover (times per yr.)	12.2	14.7	16.8	13.9	12.2	10.3

Operating Ratios Service Stations

ITEMS	20,000 TO 100,000 POPULATION			
	\$10,000 to \$20,000	\$20,000 to \$30,000	\$30,000 to \$50,000	\$50,000 to \$300,000
Number of Concerns ..	46	39	37	20
Cost of Goods Sold....	74.1%	75.1%	75.8%	71.1%
EXPENSES:				
Salaries, Owners and Officers .....	10.4%	8.4%	7.0%	4.0%
Wages, All Other Employees .....	5.7	6.2	7.4	12.0
Occupancy Expense..	5.1	4.5	3.3	2.8
Advertising .....	0.4	0.4	0.4	0.9
Bad Debt Losses ....	0.4	0.4	0.2	0.5
All Other Expense...	2.4	3.5	3.4	4.9
TOTAL EXPENSE....	24.4%	23.4%	21.7%	25.1%
GROSS MARGIN .....	25.9%	24.9%	24.2%	28.9%
NET PROFIT.....	1.5%	1.5%	2.5%	3.8%
Inventory Turnover (times per yr.)	20.5	21.2	24.4	14.7

Operating Ratios Service Stations

ITEMS	100,000 POPULATION AND OVER				
	Less than \$10,000	\$10,000 to \$20,000	\$20,000 to \$30,000	\$30,000 to \$50,000	\$50,000 to \$300,000
Number of Concerns.	32	57	58	38	26
Cost of Goods Sold ..	75.3%	75.5%	76.2%	74.1%	74.0%
EXPENSES:					
Salaries, Owners and Officers .....	10.6%	10.1%	8.4%	7.1%	5.0%
Wages, All Other Employees .....	5.0	5.5	5.0	8.4	9.7
Occupancy Expense.	4.6	4.9	4.8	4.7	3.5
Advertising .....	0.3	0.3	0.3	0.4	0.6
Bad Debt Losses ..	0.4	0.4	0.3	0.4	0.3
All Other Expense.	1.8	2.2	2.3	3.2	4.6
TOTAL EXPENSE ..	22.7%	23.4%	21.1%	24.2%	23.7%
GROSS MARGIN ....	24.7%	24.5%	23.8%	25.9%	26.0%
NET PROFIT .....	2.0%	1.1%	2.7%	1.7%	2.3%
Inventory Turnover (times per yr.)	14.8	20.8	22.5	23.5	29.4

# APPENDIX III

TABLE I. - SUMMARY OF GASOLINE-SALES MADE THROUGH THE VARIOUS BULK PLANTS FOR 1946, BY DISTRICTS AND ZONES

AREA	RESELLERS	COMMERCIAL	MARINE	TOTAL
Victoria .....	7, 096, 380	2, 313, 569	141, 820	9, 551, 769
Vancouver and district .....	32, 289, 565	8, 574, 486	1, 490, 569	42, 354, 620
Balance of Province .....	24, 751, 605	14, 336, 565	3, 713, 436	42, 801, 606
TOTALS .....	64, 137, 550	25, 224, 620	5, 345, 825	94, 707, 995
Zone 1 (less Victoria) .....	2, 868, 595	1, 604, 018	266, 925	4, 739, 538
Zone 3 .....	2, 943, 744	3, 508, 410	3, 332, 764	9, 784, 918
Zone 4 .....	1, 925, 840	767, 845	7, 063	2, 700, 748
Zone 5 .....	1, 669, 450	978, 980	.....	2, 648, 430
Zone 6 .....	377, 714	266, 113	.....	643, 827
Zone 7 .....	238, 151	43, 602	.....	281, 753
Zone 8 .....	2, 013, 532	936, 924	1, 328	2, 951, 784
Zone 9 .....	4, 891, 737	2, 351, 496	4, 518	7, 247, 751
Zone 10 .....	2, 107, 838	846, 883	1, 178	2, 955, 899

Zone 11.....	202, 708	134, 916	.....	337, 624
Zone 12.....	311, 493	244, 662	.....	556, 155
Zone 13.....	1, 232, 197	306, 073	.....	1, 538, 270
Zone 14.....	292, 554	108, 852	.....	401, 406
Zone 15.....	3, 676, 052	2, 237, 791	99, 660	6, 013, 503

NOTE. - Not included in the above table are 2, 331, 056 gallons of gasoline sold for use in aircraft.

# APPENDIX IV

TABLE 1, - SUMMARY OF GASOLINE-SALES MADE THROUGH THE VARIOUS BULK PLANTS FOR 1947, BY DISTRICTS AND ZONES

AREA	RESELLERS	COMMERCIAL	MARINE	AVIATION	TOTAL
Victoria .....	7, 612, 209	2, 196, 564	213, 670	6, 206	10, 028, 649
Vancouver and district	38, 501, 417	9, 801, 410	1, 457, 241	557, 563	50, 317, 631
Balance of Province...	31, 438, 276	18, 347, 946	4, 632, 420	2, 378, 947	56, 797, 589
TOTALS .....	77, 551, 902	30, 345, 920	6, 303, 331	2, 942, 716	117, 143, 869
Zone 1 (less Victoria).	3, 916, 300	2, 270, 231	408, 931	7, 571	6, 603, 033
Zone 3.....	3, 458, 742	4, 104, 588	3, 996, 824	107, 966	11, 668, 120
Zone 4.....	2, 398, 819	934, 454	3, 385	941	3, 339, 599
Zone 5.....	2, 055, 038	1, 045, 315	97, 748	15, 742	3, 125, 843
Zone 6.....	624, 277	349, 097	.....	.....	973, 374
Zone 7.....	293, 693	65, 497	.....	36	359, 226
Zone 8.....	2, 409, 901	1, 216, 228	796	10, 713	3, 637, 638
Zone 9.....	6, 304, 868	2, 778, 834	1, 290	61, 396	9, 146, 388

Zone 10.....	2, 587, 022	1, 009, 798	2, 154	5, 826	3, 604, 800
Zone 11.....	250, 480	145, 464	.....	.....	395, 944
Zone 12.....	380, 221	291, 186	.....	1, 779	673, 186
Zone 13.....	1, 527, 571	389, 607	.....	133	1, 917, 311
Zone 14.....	408, 201	168, 531	.....	.....	576, 732
Zone 15.....	4, 823, 143	3, 579, 116	209, 292	32, 472	8, 644, 023
Aviation gasoline (balance of Province) not listed in zones ....	.....	.....	.....	2, 134, 372	2, 134, 273

# APPENDIX V

TABLE 1. - SUMMARY OF GASOLINE-SALES MADE THROUGH THE VARIOUS BULK PLANTS FOR 1948, BY DISTRICTS AND ZONES

AREA	RESELLERS	COMMERCIAL	MARINE	AVIATION	TOTAL
Victoria .....	8, 548, 742	2, 257, 619	232, 562	5, 277	11, 044, 200
Vancouver and district	42, 834, 776	11, 516, 816	1, 630, 672	742, 847	56, 725, 111
Balance of Province...	34, 343, 137	20, 185, 229	5, 520, 031	3, 278, 351	63, 326, 748
TOTALS.....	85, 726, 655	33, 959, 664	7, 383, 265	4, 026, 475	131, 096, 059
Zone 1 (less Victoria).	4, 630, 483	2, 400, 220	342, 685	16, 976	7, 390, 364
Zone 3.....	3, 696, 535	3, 495, 377	4, 956, 335	90, 560	12, 238, 807
Zone 4.....	2, 877, 805	1, 036, 831	1, 005	1, 320	3, 916, 961
Zone 5.....	2, 082, 695	1, 098, 724	13, 820	22, 296	3, 217, 535
Zone 6.....	651, 113	423, 955	.....	.....	1, 075, 068
Zone 7.....	249, 036	110, 948	.....	.....	359, 984
Zone 8.....	2, 537, 756	1, 414, 827	1, 440	10, 144	3, 964, 167
Zone 9.....	7, 142, 387	3, 273, 514	438	22, 294	10, 438, 633

Zone 10.....	2, 934, 209	1, 155, 537	555	4, 938	4, 095, 239
Zone 11.....	288, 338	183, 582	.....	.....	471, 920
Zone 12.....	393, 812	332, 369	.....	360	726, 541
Zone 13.....	1, 603, 772	467, 140	.....	268	2, 071, 180
Zone 14.....	429, 830	239, 133	.....	.....	668, 963
Zone 15.....	4, 825, 366	4, 553, 072	203, 753	445, 230	10, 027, 421
Aviation gasoline (balance of Province) not listed in zones, ....	.....	.....	.....	2, 663, 965	2, 663, 965

APPENDIX VI

TABLE 1. - SUMMARY OF GASOLINE-SALES MADE THROUGH THE VARIOUS BULK PLANTS FOR 1949, BY DISTRICTS AND ZONES

AREA	RESELLERS	COMMERCIAL	MARINE	AVIATION	TOTAL
Victoria .....	9, 132, 139	2, 365, 138	164, 582	12, 009	11, 673, 868
Vancouver and district.	46, 587, 692	11, 950, 096	1, 473, 316	2, 137, 445	62, 148, 549
Balance of Province...	39, 653, 994	20, 084, 759	5, 432, 626	2, 788, 588	67, 959, 967
TOTALS .....	95, 373, 825	34, 399, 993	7, 070, 524	4, 938, 047	141, 782, 384
Zone 1 (less Victoria).	5, 197, 927	2, 449, 337	307, 484	32, 346	7, 987, 094
Zone 3.....	3, 846, 148	3, 285, 588	5, 011, 697	362, 219	12, 505, 652
Zone 4.....	3, 124, 579	1, 088, 415	19, 622	1, 936	4, 234, 552
Zone 5.....	2, 255, 956	1, 167, 575	20, 171	19, 702	3, 463, 404
Zone 6.....	710, 474	461, 169	1, 729	.....	1, 173, 372
Zone 7.....	295, 535	109, 140	.....	124	404, 799
Zone 8.....	2, 964, 685	1, 542, 764	45	28, 067	4, 535, 561
Zone 9.....	8, 158, 193	3, 386, 907	303	80, 878	11, 626, 381

Zone 10.....	3, 525, 042	1, 231, 370	134	25, 378	4, 781, 924
Zone 11.....	376, 724	213, 554	195	468	590, 941
Zone 12.....	405, 927	334, 609	.....	127	740, 663
Zone 13.....	1, 982, 850	504, 140	.....	26, 026	2, 513, 016
Zone 14.....	414, 371	244, 683	.....	10	659, 064
Zone 15.....	6, 395, 583	4, 065, 508	72, 975	1, 737, 768	12, 271, 834
Aviation gasoline (balance of Province) not listed in zones.....	.....	.....	.....	471, 810	471, 810

APPENDIX VII

TABLE 1. - SUMMARY OF GASOLINE-SALES MADE THROUGH THE VARIOUS BULK PLANTS FOR 1950, BY DISTRICTS AND ZONES

AREA	RESELLERS	COMMERCIAL	MARINE	AVIATION	TOTAL
Victoria .....	9, 789, 667	2, 564, 447	151, 318	31, 898	12, 537, 330
Vancouver and district.	51, 945, 637	11, 971, 626	1, 500, 509	3, 437, 901	68, 855, 673
Balance of Province...	45, 447, 382	20, 649, 091	5, 767, 975	1, 533, 398	73, 397, 846
TOTALS.....	107, 182, 686	35, 185, 164	7, 419, 802	5, 003, 197	154, 790, 849
Zone 1 (less Victoria).	5, 685, 276	2, 504, 763	292, 306	22, 486	8, 504, 831
Zone 3.....	4, 475, 388	3, 593, 360	5, 363, 474	524, 494	13, 956, 716
Zone 4.....	3, 261, 416	1, 101, 961	10	1, 056	4, 364, 443
Zone 5.....	2, 526, 505	1, 286, 085	1, 716	17, 543	3, 831, 849
Zone 6.....	1, 065, 261	344, 235	.....	1, 289	1, 410, 785
Zone 7.....	259, 215	79, 452	.....	45	338, 712
Zone 8.....	3, 739, 177	1, 533, 295	.....	46, 047	5, 318, 519

Zone 9.....	9, 114, 670	3, 401, 149	99	81, 835	12, 597, 753
Zone 10.....	4, 167, 834	1, 260, 146	.....	24, 341	5, 452, 321
Zone 11.....	401, 358	292, 403	941	266	694, 968
Zone 12.....	434, 846	335, 435	.....	60	770, 341
Zone 13.....	2, 176, 478	543, 379	.....	37, 753	2, 757, 610
Zone 14.....	470, 837	184, 873	.....	.....	655, 710
Zone 15.....	7, 669, 121	4, 188, 555	109, 429	776, 183	12, 743, 288









